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United States

1649

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

THOMAS W. NEALON, Trustee, and J. J. MAC-
KAY, Creditor,

Appellants,

vs.

GEORGE W. SHUTE, Bankrupt,

Appellee.

VOLUME I.


(Pages 1 to 432, Inclusive.)

Upon Appeal from the United States District Court for
the District of Arizona.

FILED

NOV 14 1929

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

ALICE M. BIRDSALL, Fleming Building, Phoenix, Arizona,

THOMAS W. NEALON, Trustee, Luhrs Building,
Phoenix, Arizona,
Attorneys for Appellants.

ORME LEWIS, Luhrs Building, Phoenix, Arizona,
JAMES R. MOORE, Security Building, Phoenix,
Arizona,
Attorneys for Appellee. [2*]

DEBTOR'S PETITION.

N. B.—Any person except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt. Sec. 4.

N. B.—All petitions and the schedules filed therewith shall be printed or written plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference. General Orders, Rule V.

N. B.—Bankrupt shall file with petition a schedule of his creditors and property all in triplicate. Sec. 7 (8:) also see Rule 35.

N. B.—\$30.00 deposit required. Section 40, 48 and 52.

To the Honorable FRED C. JACOBS, Judge of
the District Court of the United States, for the
District of Arizona.

The petition of George W. Shute, of Phoenix,

*Page-number appearing at the foot of page of original certified Transcript of Record.

in the county of Maricopa, in the District of Arizona, Lawyer, respectfully represents:

(State occupation)

That he has resided for the greater portion of six months next immediately preceding the filing of this petition at Phoenix, Arizona, within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts.

WHEREFORE, your petitioner prays that he may be adjudged by the Court to be a bankrupt within the purview of said acts.

GEORGE WALTER SHUTE,

(Christian Name in Full)

Petitioner.

ORME LEWIS,

Attorney for Petitioner.

303 Luhrs Building, Phoenix, Arizona.

(Address)

A. The petition for adjudication shall be signed in the full Christian and surname of the petitioner and the petition for discharge in the same manner; in other places the customary signature of the signer may be used. Rule 14.

All petitions, schedules and pleadings must be upon white paper, approximately 14 inches long by 8½ inches wide. All pleadings must be properly endorsed with the name of the court, the title of the cause, and, if the parties appear by attorney, his name and office address. If the attorney resides in the city, the street and number must be given. Rule 13.

United States of America,

District of Arizona,—ss.

I, George W. Shute, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

GEORGE W. SHUTE,

Petitioner.

Subscribed and sworn to before me this 17th day
of April, 1928.

[Seal]

R. E. CONGER,
(Official Character)
Notary Public.

My commission expires Jan. 15, 1931.

N. B.—Oaths required by the act,
except upon hearings in court,
may be administered by referees
and by officers authorized to ad-
minister oaths in proceedings
before the courts of the United
States, or under the laws of
the State where the same are
to be taken. Bankruptcy Act of
1898, c. 4, 20.

Filed Apr. 17, 1928. [3]

In the District Court of the United States for the
Phoenix Division, District of Arizona.

No. B.—486—PHX.—IN BANKRUPTCY.

In the Matter of GEORGE W. SHUTE, Bankrupt.
BANKRUPT'S PETITION FOR DISCHARGE
AND ORDER OF NOTICE THEREON.

To the Honorable F. C. JACOBS, Judge of the
District Court of the United States for the
District of Arizona.

George W. Shute, of Phoenix, in the County of
Maricopa, and State of Arizona, in said District,
respectfully represents that on the 17th day of April
last past, he was duly adjudged bankrupt under the
acts of Congress relating to bankruptcy; that he
duly surrendered all his property and rights of

property, and he fully complied with all the requirements of said acts and of the orders of the Court touching his bankruptcy.

WHEREFORE, he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from such discharge.

Dated this 29th day of May, A. D. 1928.

GEORGE W. SHUTE,
Bankrupt.

ORDER OF NOTICE.

———— District of Arizona,—ss.

On this 31st day of May, A. D. 1928, on reading the foregoing Petition for Discharge of the above-named Bankrupt, it is—

ORDERED by the Court, that a hearing be had upon the same on the 20th day of July, A. D. 1928, before the said court, at Phoenix, in said district, at ten o'clock in the forenoon; and that notice thereof be published in "The Messenger," a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the Court, that the Clerk shall send, by mail, to all known creditors, copies of said petition and this order, addressed to them at their places of residence as stated.

WITNESS The Honorable F. C. JACOBS,
Judge of the said court, and the seal thereof, at
Phoenix, in said district, on the 31st day of May,
A. D. 1928.

[Seal of the Court]

C. R. McFALL,
Clerk.

By M. R. Malcolm,
Deputy Clerk.

PROOF OF MAILING NOTICES.

I hereby certify that I have on this 9th day of
June, A. D. 1928, sent by mail copies of the above
order as therein directed.

C. R. McFALL,
Clerk.

By Thos. O. Bishop,
Deputy Clerk.

Petition. Filed May 29, 1928.

Order of Notice. Filed May 31, 1928. [4]

[Title of Court and Cause.]

APPEARANCE IN OPPOSITION TO DIS- CHARGE (THOMAS W. NEALON).

To the Clerk of the United States District Court
for the District of Arizona:

Thomas W. Nealon, the trustee of the above-
named bankrupt, duly authorized at a meeting of
the creditors to oppose the bankrupt's discharge,
hereby appears in opposition to the said bankrupt's
discharge, and asks that his time for filing speci-

fications in opposition thereto be extended to October 15, 1928.

THOMAS W. NEALON,
Trustee.

Filed Jul. 20, 1928. [5]

[Title of Court and Cause.]

APPEARANCE IN OPPOSITION TO DIS-
CHARGE (J. J. MACKAY).

To the Clerk of the United States District Court
for the District of Arizona:

J. J. Mackay, a creditor of the above-named bankrupt, hereby appears in opposition to the said bankrupt's discharge, and asks that his time for filing specifications in opposition thereto be extended to October 15, 1928.

J. J. MACKAY.

By ALICE M. BIRDSALL,
His Attorney.

Filed Jul. 20, 1928. [6]

[Title of Court and Cause.]

TRUSTEE'S SPECIFICATIONS OF OBJEC-
TIONS TO DISCHARGE OF BANKRUPT.

I, Thomas W. Nealon, of the City of Phoenix, County of Maricopa, State of Arizona, in the Federal District of Arizona, being the duly elected,

qualified and acting trustee of the bankrupt estate of the above-named bankrupt, do hereby oppose the granting to him of a discharge from his debts, having been duly authorized and instructed so to do at a meeting of creditors of the above-named bankrupt called for that purpose, of which meeting of creditors due notice was given as provided by law, said meeting of creditors having been held on the 22d day of July, 1928.

For the grounds of said opposition he files the following specifications:

FIRST: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that he has knowingly and fraudulently concealed from his Trustee property belonging to his estate in bankruptcy as follows:

- (a) One Hudson car, described as 1928 Hudson Sedan, Motor Number 495,579, Serial Number 799,342, owned by said bankrupt at the time of filing his petition in bankruptcy and by him placed in the custody of A. E. England shortly prior to bankruptcy with the intention that he and the said England [7] should keep said car concealed from said Trustee; and further, by knowingly and fraudulently omitting to schedule said car as an asset of said estate, either in the first schedule of his assets and liabilities filed by him

herein, or in the amended schedule of his assets and liabilities filed by him herein, which said amended schedule was filed after an order made by the Court upon written motion of a creditor requiring him so to do. The value of said Hudson car was, to wit, the sum of \$900.00..

\$900.00

(b) One life insurance policy upon the life of the bankrupt as follows: Policy No. 3310053, said policy having been issued by the Mutual Life Insurance Company of New York, dated May 25th, 1924; said life insurance policy being one in which he had the right to change the beneficiary without the consent of the beneficiary named therein, and which life insurance policy had a cash surrender value, at the time of the filing of the debtor's petition in bankruptcy of Seven Hundred Forty-six and 85/100 (\$746.85) Dollars; said concealment having been made by knowingly and fraudulently omitting the same from his schedule of assets and by inserting in the form used, at the place for the listing of insurance policies, the word "None"; and by further stating, under oath, during the bankruptcy examination in the first meeting of

\$ 746.85

creditors that the said policy did not have any [8] cash surrender

\$1,646.85

Forward \$1,646.85

value; and by failing and refusing to produce said policy until demand was made therefor by said trustee at the continued first meeting of creditors on May 29th, 1928.

- (c) A savings account in the First National Bank of Arizona, at Phoenix, Arizona, being account No. 19061, in the name of Jessie M. Shute, wife of said bankrupt, but against which account said bankrupt retained the right to check, said savings account being made up from funds acquired by the bankrupt subsequent to the marriage of said bankrupt and said Jessie M. Shute, and containing, on the 4th day of January, 1928, the sum of Three Thousand Six Hundred Eighty-seven and 50/100 (\$3,687.50) Dollars, and from which account there was withdrawn, on the 27th day of February, 1928, the sum of Twelve Hundred Thirty-five (\$1235.00) Dollars, paid to the First National Bank of Arizona as payment of a promissory note of one Joseph E.

Noble, dated October 18th, 1927, payable to said bank, and which note was signed by said bankrupt, G. W. Shute, as security; and from which savings account there was withdrawn, three days before said bankrupt filed his voluntary petition in bankruptcy herein, on, to wit, April 14, 1928, the sum of Fifteen Hundred (\$1500.00) Dollars, which amount was delivered to the son-in-law of said [9] bankrupt,

\$1,646.85

Forward \$1,646.85

namely, Leslie Creed, leaving the amount of the said savings account in said bank on the day of filing said petition in bankruptcy, the sum of Eleven Hundred Sixty-two and 30/100 (\$1162.30) Dollars. That said concealment was effected by knowingly and wilfully omitting any mention of said savings account or deposit from his schedules filed in said bankruptcy proceedings, and said omission being made for the purpose of concealing the existence thereof from the trustee and thereby hiding from him the said sum of money which was the community property of the said

bankrupt and his wife, the said Jessie M. Shute, and part of said bankrupt estate; and by knowingly and fraudulently concealing from said trustee the existence of said promissory note of Joseph E. Noble, paid by said bankrupt as aforesaid, and by knowingly and fraudulently concealing from said trustee the transfer of said amount of Fifteen Hundred (\$1500.00) Dollars, from said savings account to said Leslie Creed \$3,687.50

(d) One certain contract entered into by and between one Wesley Goswick and the bankrupt, on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of Twenty Thousand (\$20,000.00) Dollars out of the proceeds of the sale by the said Wesley Goswick of a [10] cinnabar mining

\$5,334.35

Forward \$5,334.35

property consisting of twenty unpatented mining claims located upon or near what is known as Slate Creek in the County of Gila, State of Arizona, the title to said property

being in the name of said Goswick, and the sale thereof being made to one L. E. Foster, for the sum of Two Hundred Thousand (\$200,000.00) Dollars, payable as follows: \$5,000 on the 8th day of December, 1926; \$10,000 on or before six months from the 8th day of December, 1926; \$20,000 on or before one year from the 8th day of December, 1926; \$82,500 on or before 18 months from the 8th day of December, 1926, and \$82,500 on or before two years from the 8th day of December, 1926, less certain sums to be paid monthly by the purchaser of said property and less certain royalties which were to be paid by the purchaser as they were received on the smelting returns of the ore taken from said mine; a copy of which said contract between said Goswick and said Foster being held in escrow in the Old Dominion Bank of Globe, Arizona; the said mining property having been owned jointly by the said Wesley Goswick and one William A. Packard, with the exception of such interest as the said bankrupt had therein which interest of the bankrupt under said contract amounted to the said sum of Twenty Thousand

(\$20,000.00) Dollars, and was payable in an amount [11] of ten

\$5,334.35

Forward \$5,334.35

per cent (10%) of the payments made by the purchaser at the time they were made by the purchaser, said contract having been recognized by the said Wesley Goswick and the said William A. Packard and the payment of Five Hundred (\$500.00) Dollars having been made thereon, on or about the 8th day of December, 1926, to the said bankrupt by the said Wesley Goswick and William A. Packard, and One Thousand (\$1,000.00) Dollars having been on or about the 8th day of June, 1927, paid thereon to the said bankrupt by the said Goswick and said Packard, and the further sum of Two Thousand (\$2,000.00) Dollars, being paid to the said bankrupt in the month of December, 1927, by the said Wesley Goswick, for and on behalf of the said Wesley Goswick and William A. Packard and subsequent to the adjudication in bankruptcy in, to wit, the month of June, 1928, a further sum of Eight Thousand (\$8,000.00) Dollars having been

paid to said bankrupt, on said contract, by the said Wesley Goswick for and on behalf of himself and said William A. Packard; the said Wesley Goswick having on, to wit, August 20, 1927, assumed the payment to the said bankrupt of all subsequent payments to him under said contract on behalf of himself and said [12] Packard, and there be-

\$5,334.35

Forward \$5,334.35

ing still due to the trustee in bankruptcy, as the successor in interest of the said bankrupt, a further sum which, with the payments made aforesaid to said bankrupt, would make a total sum of \$20,000, said sum, by said original contract, having become due on December 8, 1928, but some extension of the time of the making of the payment of the sum due by the purchaser thereon having been made prior to that time without the consent of your trustee in bankruptcy, the existence of the said contract and of the payments made thereon and to be made thereon having been knowingly and fraudulently concealed from your trustee by the knowing and wilful omission

by the bankrupt from his schedules of said property as one of the assets of said estate, and said omission being made with the intent and design of keeping your trustee in ignorance of the existence thereof and of the payments made and to be made thereon; and the further concealment of said contract and of payments made thereunder and to be made thereunder, by the testimony under oath of said bankrupt at the first meeting of creditors at which said bankrupt testified that he had never received from said Goswick any sum, in connection with the sale of said cinnabar property, except the amount of Five Hundred (\$500.00) Dollars, which [13]

\$5,334.35

Forward \$5,334.35

amount he testified was a gift to him made in the month of December, 1927, and said bankrupt further testified that no further or other amounts were payable to him by said Goswick, and that he, said bankrupt, had no interest in said option and sale of said mining property made by said Goswick to said L. E.

Foster \$16,500.00

(e) The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as follows: Lots One (1), Two (2), Three (3), Four (4) and South Half (S.1/2) of Lot Five (5), Block Forty-five (45), East Globe Townsite, and being of the value of, to wit, Five Thousand (\$5,000.00) Dollars, which said property was, up to the time that the title thereof passed to your trustee by operation of law on the filing of the petition in bankruptcy, the property of said bankrupt and purchased with funds acquired by him subsequent to the marriage of said bankrupt to the said Jessie M. Shute, together with a purchase money mortgage given by himself and the said Jessie M. Shute, as a part of the consideration thereof, the said mortgage being a community liability of the said bankrupt; said concealment having been effected by the bankrupt [14] knowingly and

\$21,834.35

Forward \$21,834.35

fraudulently omitting any description thereof from his schedules in bankruptcy filed herein, the said

property being situated in the county of Gila, and the said bankruptcy proceedings being in Maricopa County, and thus withholding from the trustee any information as to its existence, and further by the said bankrupt having in, to wit, the month of April, 1928, fraudulently and with intent to conceal said property from the said trustee, disclaimed any interest therein in favor of his wife, Jessie M. Shute, and delivered possession thereof to her and having since said time withheld possession thereof from said trustee and prevented the collection of the rents thereof by the said trustee, which rents amounted to the sum of, to wit, Fifty (\$50.00) Dollars per month; and further by causing the said Jessie M. Shute, subsequent to the adjudication of bankruptcy herein, to file a declaration of homestead on said premises in her own name and by employing for and on behalf of the said Jessie M. Shute an attorney at law, one Clifton Matthews, of Globe, Arizona, to obstruct the securing of the possession thereof and the rents therefrom, by the trustee; the said declaration of homestead having been

filed in the office of the County Recorder of said [15] Gila County,

_____ \$21,834.35

Forward \$21,834.35

Arizona, on the 18th day of June, 1928, at 4:45 o'clock P. M., in Book 1 of Homesteads, pages 121 and 122, at the request of the said bankrupt \$ 5,000.00

(f) One Essex car, described as Essex Coach Serial Number 640003, of the value of, to wit, the sum of Six Hundred (\$600.00) Dollars, the property of said bankrupt estate, having been concealed by the said bankrupt knowingly and fraudulently omitting the same from his schedules with the intention of concealment from the trustee the existence thereof, the said car being further concealed by the placing of a license and certificate of title thereof in the name of said Jessie M. Shute, upon the pretense that the same was a gift by the bankrupt to said Jessie M. Shute, said bankrupt having been totally insolvent and not having sufficient assets to pay his debts for more than ten (10) years prior to the alleged gift \$ 600.00

- (g) The sum of Nine Hundred Ninety-five (\$995.00) Dollars, being the amount which said bankrupt paid during the month of December, 1927, to A. E. England by check on the First National Bank of Arizona, signed by said [16] G. W. Shute,

\$27,434.35

Forward \$27,434.35

bankrupt, as a payment on a car for one Virginia L. Wentworth, of Globe, Arizona, which payment said bankrupt testified, under oath, at the first meeting of creditors, on the 29th of May, 1928, was made by him for said Virginia L. Wentworth in December, 1927, out of moneys paid to him by said Virginia L. Wentworth, but which money so paid to him by said Virginia L. Wentworth in December, 1927, did not appear in any statement or data furnished said trustee by said bankrupt, and has never been accounted for by said bankrupt, but has been knowingly and fraudulently concealed by said bankrupt from said trustee..... \$ 995.00

- (h) The sum of Two Hundred Fifty (\$250.00) Dollars, which said bankrupt knowingly and fraudulently and with intent to conceal same from

the trustee omitted from his schedule of assets filed herein, which said sum of \$250.00 was a deposit made by said bankrupt with one Arthur LaPrade during the month of December, 1927, for the purpose of investment, and which subsequent to the adjudication in bankruptcy was returned to said bankrupt by said Arthur LaPrade \$ 250.00

(i) One phonograph of the value of approximately Two Hundred (\$200.00) Dollars, which phonograph said bankrupt knowingly and fraudulently concealed from said trustee by [17] omitting same

\$28,679.35

Forward \$28,679.35

from his schedule of assets filed herein and by testifying under oath at the first meeting of creditors that he had no musical instrument. 200.00

The total amount of the concealment of property from your trustee by the methods hereinabove described being of the value of, to wit, the sum of Twenty-eight Thousand Eight Hundred Seventy-nine and 35/100 (\$28,879.35) Dollars \$28,879.35

SECOND: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the bankruptcy act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. You have a car at the present time, have you not?

A. I bought a car when I came down here, a Hudson, from my brother-in-law, and I paid \$100 a month on it until it was paid for; then I traded it in on another car from England, and then traded that in on another one, which is the car I have now; there is probably \$1,000 due on it. [18]

That said answer of said bankrupt was false as to a material fact in this, that the entire purchase price of said last-named car had been paid, and that there was no amount whatever due to said England thereon, and that said car was at said time an asset of said bankrupt estate, which was being concealed from said trustee by said bankrupt and said A. E. England, and said answer was given for the pur-

pose of deceiving the trustee into believing that the bankrupt estate had no interest in said car by reason of the fact that \$1,000 of the purchase price was due thereon at said time, when in truth and in fact no part of the purchase price was due thereon at said time.

THIRD: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. (Referring to Hudson car owned by said bankrupt at the time of filing his petition in bankruptcy:) You have made no payments except the work you have done for him?

A. That is about the way it would figure out; I don't think I made any cash payments at all.

[19]

That said answer as given by said bankrupt was false as to a material fact in that cash payments had been made on said Hudson car by said bankrupt, as said bankrupt well knew at the time he so

answered said question, and that said car was entirely paid for, and was at the time said answer was given an asset of said estate, and should have been delivered by said bankrupt to said trustee, and that said answer was knowingly and fraudulently given by said bankrupt for the purpose of deceiving the trustee into the belief that a vendor's lien existed against said car in excess of the value thereof, when in truth and in fact said car was entirely paid for.

FOURTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. You did not schedule it? (Referring to Hudson car owned by said bankrupt at the date petition in bankruptcy was filed.)

A. I turned it back.

That said answer so given by said bankrupt was false as to a material fact, because in truth and in fact, said car had not been turned back, but was being held by said A. E. England, acting in collu-

sion with the bankrupt, for the use of said [20] bankrupt and for the purpose of concealing the same from the trustee of said bankrupt estate, and the said car was not scheduled for the purpose of further aiding said bankrupt and said England in the concealment of said car from the trustee.

FIFTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. Since that time (January, 1924), how much have you received from the firm's business? (Referring to the firm of Armstrong, Lewis & Kramer.)

A. Well, I can only give an approximation, but I think it is pretty close. I think the first year I received about \$5500; that was 1924; in 1925, I received between \$5500 and \$6000; I think in 1926 it was about \$8,000; I think the last year I received somewhere in the neighborhood of \$10,000; that is about right, I think.

That said answer as given by said bankrupt was false as to a material fact in this that said bankrupt stated that he received from the firm's business, being the firm of Armstrong, [21] Lewis & Kramer, in which said bankrupt was, and had been since the year 1924, a partner, in the neighborhood of Ten Thousand (\$10,000.00) Dollars, in the year 1927, when in truth and in fact said bankrupt received from the business of said firm of Armstrong, Lewis & Kramer, during the year 1927, the amount of Fifteen Thousand Two Hundred Fifty (\$15,250.00) Dollars, and that the difference between said amount of \$10,000, which said bankrupt testified he had received from said firm's business during the year 1927, and said amount of \$15,250, which was the true amount received by said bankrupt from said firm's business during the year 1927, to wit, the sum of Five Thousand Two Hundred Fifty (\$5,250.00) Dollars, constituted an asset of said bankrupt estate which should have been applied to the indebtedness of said bankrupt, and which amount it was incumbent upon said bankrupt to account for in order to satisfactorily explain the deficiency of his assets to meet his liabilities, and the amount of his receipts, the dissipation of which it was incumbent on him to explain satisfactorily in said bankruptcy proceedings, and that said answer was knowingly and fraudulently given by said bankrupt for the purpose of deceiving said trustee as to the true amount received by him from the firm of Armstrong, Lewis & Kramer during the year 1927.

SIXTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn by the referee in bankruptcy to testify to the whole truth in said matter, he has knowingly [22] and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. How much have you drawn from the firm (being the firm of Armstrong, Lewis & Kramer) since the first of the year?

A. I think about \$500 a month. There has been no dividend in April.

That said answer of said bankrupt was false as to a material fact in this, that said bankrupt stated that he had drawn about \$500 a month since the first of the year (being the year 1928) when in truth and in fact said bankrupt had received from said firm of Armstrong, Lewis & Kramer between the first day of January, 1928, and the date of filing said petition in bankruptcy on April 17, 1928, the amount of Two Thousand Four Hundred Fifty (\$2,450.00) Dollars; that said bankrupt further stated that there had been no dividend in April (being April, 1928) when in truth and in fact said

bankrupt had received from said firm of Armstrong, Lewis & Kramer a dividend in the amount of Seven Hundred Seventy-five (\$775.00) Dollars, on the 10th day of April, 1928, which said amount of \$775.00 said bankrupt had in his possession seven (7) days before filing his petition in bankruptcy, and that it was incumbent upon said bankrupt to account for the expenditure of said sum of \$775.00 in order to satisfactorily explain the deficiency of his assets to meet his liabilities, and the disappearance of all the bankrupt's funds in bank except the amount scheduled by him in his voluntary petition in bankruptcy filed April 17, 1928, to wit, the amount of \$15.67. [23]

SEVENTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false statement in and in relation to his proceedings in bankruptcy, as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. In addition to that (referring to receipts from the firm of Armstrong, Lewis & Kramer)

then, there should be other amounts that you have received in order to make the books complete?

A. That depends on the way you look at it. You will remember that I told you about the little block of stock we sold after we came down here. There was also a little Mrs. Shute owned in the Iron Blossom, I think it was called; there was 100 shares of that. We sold that and I used the money. There may be two or three small instances like that, but except in very small items of that kind, the income was from the firm.

That said answer of said bankrupt was false as to a material fact in this, that said bankrupt received, in truth and in fact, during the period between January 1st, 1926, and the date of the filing of his petition in bankruptcy, to wit, the 17th day of April, 1928, other income outside of the income received from the firm, in large amounts, to wit, the amount of at least Four Thousand (\$4,000.00) Dollars, during said period of time, and that in making said statement and [24] answering said question as he did, said bankrupt was concealing said amount of \$4,000 which he had received in income independent of the income received from the firm of Armstrong, Lewis & Kramer, during the period from the first day of January, 1926, to the 17th day of April, 1928, the receipt of Three Thousand (\$3,000.00) Dollars, of said sum of \$4,000, being payments made by one Wesley Goswick to said bankrupt during the year 1927, on a contract existing

between said bankrupt and said Wesley Goswick, which contract passed to the trustee by operation of law upon the filing of the voluntary petition in bankruptcy filed herein by said bankrupt, but the existence of which contract was concealed from the trustee, and that said answer was knowingly and fraudulently made by said bankrupt for the purpose of deceiving said trustee into believing that he had not received any income outside of the income received from the firm of Armstrong, Lewis & Kramer, and that it was material that said bankrupt should truthfully report his entire income during said period and account for same in order to satisfactorily explain in said bankruptcy proceedings the deficiency of his assets to meet his liabilities.

EIGHTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false statement in and in relation to his proceedings in bankruptcy, as follows: [25]

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. During all of this period (period said bankrupt had been with the firm of Armstrong, Lewis & Kramer) did you receive any large sums of money from any other source other than those you have testified to?

A. I think I have testified to all of them, either at this hearing or the other one.

That the answer of said bankrupt to said question was false as to a material fact in this, that said bankrupt in truth and in fact had not testified as to amounts received by him during the period between January 1st, 1926, and the date of the filing of his petition in bankruptcy, to wit, the 17th day of April, 1928, and that in truth and in fact, said bankrupt had received during said period other income outside of the income received from the firm, in large amounts, to wit, the amount of at least Four Thousand (\$4,000.00) Dollars, during said period of time, and that said bankrupt had not testified at any time as to the receipt by him of said amount of \$4,000.00 received by him during said period, and that in making said statement and answering said question as he did, the said bankrupt was concealing said amount of at least \$4,000 which he had received in income independent of the income received from the firm of Armstrong, Lewis & Kramer during said period between the 1st day of January, 1926, and said 17th day of April, 1928, and that it was material that said bankrupt should truthfully report his entire income during said period and account for the same in order to explain, in the bank-

ruptcy proceedings, the deficiency of his assets to meet his indebtedness, and that said answer of said bankrupt was knowingly [26] and fraudulently made for the purpose of deceiving said trustee into believing that said bankrupt had not received any large amounts of money from any other source than the firm of Armstrong, Lewis & Kramer.

NINTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made and rendered a false statement in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following questions propounded to him under examination at the first meeting of creditors, as answered by him:

Q. You have no interest in any mining property? A. None at all.

Q. Any mining claims? A. No.

Q. Have you represented any companies over there in any way as counsel from whom you have received fees since being in Phoenix?

A. I cannot think of any. It would be on the books here if I have.

Q. You have received nothing that would not show on the books of Armstrong, Lewis & Kramer? A. I don't think so.

Q. From Globe companies or from interests you have there? A. I don't think so. [27]

That said answers of said bankrupt to said questions and each of said answers are false as to a material fact, in this, that said bankrupt had an interest in mining property at the time of filing his petition in bankruptcy, to wit, a contract with one Wesley Goswick, whereby said bankrupt was to receive from said Wesley Goswick the sum of Twenty Thousand (\$20,000) Dollars, being ten per cent (10%) of the purchase price of Two Hundred Thousand (\$200,000.00) Dollars, to be paid by one L. E. Foster to said Wesley Goswick under a contract and agreement of sale whereby said Wesley Goswick agreed to sell and said L. E. Foster agreed to buy twenty unpatented mining claims located upon or near what is known as Slate Creek, in Gila County, Arizona, said contract between said Goswick and said Foster being in escrow in the Old Dominion Bank at Globe, Arizona, and by the terms of which said Foster agreed to pay said Goswick the sum of Five Thousand (\$5,000.00) Dollars on the 8th day of December, 1926; Ten Thousand (\$10,000.00) Dollars, on or before the 8th day of June, 1927; Twenty Thousand (\$20,000.00) Dollars on or before the 8th day of December, 1927; Eighty-two Thousand Five Hundred (\$82,500.00) Dollars on or before the 8th day of June, 1928, and Eighty-two Thousand Five Hundred (\$82,500.00) Dollars on or before the 8th day of December, 1928, less certain amounts paid monthly and certain royalties to be credited on said purchase price; and that at the time

said bankrupt so answered said questions as afore-said he had received on account of said contract the amount of Thirty-five Hundred (\$3500.00) Dollars, none of which appeared upon the books of the firm of Armstrong Lewis & Kramer; that said bankrupt knowingly and fraudulently concealed the receipt of said amount and of said payments under said contract from the trustee in bankruptcy, and that it was material that said [28] bankrupt should reveal said amount of \$3,500 and account for the same in order to satisfactorily explain the deficiency of his assets to meet his liabilities; and for the further reason that said bankrupt had further payments coming from said contract and said interest in said mining property, which were the property of the trustee of said bankrupt estate, and that by concealing the existence of said contract from said trustee in bankruptcy, said bankrupt was withholding assets from said estate which should properly be applied to the payment of the claims of said estate.

TENTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made and rendered a false statement in and in relation to his proceedings in bankruptcy, as follows:

That he knowingly and fraudulently made a false oath in answering the following questions propounded to him under examination at the first meeting of creditors, as answered by him:

Q. When was this \$500 payment received from Mr. Goswick?

A. In December, 1927.

Q. Have you ever received any other amounts from him?

A. Only for fees; they would go into the firm.

Q. This \$500 was not fees? A. No.

Q. Have you any interest in these options of Goswick's? A. No. [29]

Q. You do not expect to receive any other amounts from him other than this \$500?

A. No.

Q. If he should send you any more money you would be surprised, would you?

A. I most certainly would.

That said answers of said bankrupt to said questions were, and each of said answers was, false as to a material fact in this, that said bankrupt received from said Goswick during the month of December, 1927, a payment of Two Thousand (\$2,000.00) Dollars, and that the said bankrupt had received from said Goswick, at the time he so testified, other amounts, besides the sum of \$2,000 of, to wit, Fifteen Hundred (\$1500.00) Dollars, in addition to said amount of \$500.00, the receipt of which was testified to by said bankrupt, and that at the time said bankrupt so testified he, in truth and in

fact, had an interest in the options of the said Wesley Goswick herein referred to, in this, that said bankrupt had, at the time of filing his petition in bankruptcy, a contract with said Wesley Goswick, whereby said bankrupt was to receive from said Goswick the sum of Twenty Thousand (\$20,000.00) Dollars, being ten per cent (10%) of the purchase price of \$200,000 to be paid by one L. E. Foster to said Wesley Goswick under a contract and agreement of sale whereby said Goswick agreed to sell, and said Foster agreed to buy twenty unpatented mining claims located upon or near what is known as Slate Creek, in Gila County, Arizona, said contract between said Goswick and said Foster being in escrow in the Old Dominion Bank at Globe, Arizona, and by the terms of which said Foster agreed to pay said Goswick the sum of Five Thousand (\$5,000.00) Dollars on the 8th day of December, 1926; Ten Thousand (\$10,000) Dollars on or before the 8th day of June, 1927; Twenty Thousand (\$20,000.00) Dollars on or before the 8th [30] day of December, 1927; Eighty-two Thousand Five Hundred (\$82,500) Dollars on or before the 8th day of June, 1928, and Eighty-two Thousand Five Hundred (\$82,500) Dollars on or before the 8th day of December, 1928, less certain amounts paid monthly and certain royalties to be credited on said purchase price, and that at the time said bankrupt so answered said questions as aforesaid, he had received on account of said contract the amount of Thirty-five Hundred (\$3500.00) Dollars, none of which ap-

peared upon the books of the firm of Armstrong, Lewis & Kramer.

That said bankrupt knowingly and fraudulently so answered said questions in order to conceal from said trustee in bankruptcy the payments made and to be made to him under said contract, and that it was material that said bankrupt should reveal said amount of \$3,500 and account for the same in order to satisfactorily explain in said bankruptcy proceedings the deficiency of his assets to meet his liabilities; and for the further reason that said bankrupt had further payments coming to him under said contract and said interest in said mining property, which were the property of the trustee in bankruptcy of said estate, and said bankrupt was withholding assets of said estate which should properly be applied to the payment of the claims of the estate; that said bankrupt knowingly and fraudulently so testified that he had no interest in the options of said Wesley Goswick in order to conceal from the trustee the existence of said contract with said Goswick, whereby said bankrupt had already received the sum of \$3,500, and under which contract there was still due to said bankrupt the sum of \$16,500 (of which sum of \$16,500 the amount of \$8,000 was paid to said bankrupt within ten days after said questions were so answered by said bankrupt, to wit, on or about the 8th day of June, 1928), and the receipt of [31] which sum of Eight Thousand (\$8,000.00) Dollars by said bankrupt was concealed by him from the trustee until the 24th day

of November, 1928, and which said sum of Eight Thousand (\$8,000.00) Dollars, has never been delivered to said trustee; all of which sums so becoming due under said contract being the property of said bankrupt estate, and that said false answers were given by said bankrupt for the purpose of deceiving said trustee and concealing from him the existence of said payments theretofore made by said Goswick on said contract and the amounts still due to said bankrupt under said contract.

ELEVENTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act, in that he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

(a) In that on, to wit, the 17th day of April, 1928, the said George W. Shute, the bankrupt named herein, subscribed and swore to an oath to Schedule A (being the schedule of his assets filed herein) before one R. E. Conger, a Notary Public in and for the County of Maricopa, State of Arizona, in the Federal District of Arizona, in which he did declare the said schedule to be a statement of all his debts in accordance with the acts of Congress relating to bankruptcy, which schedule was on the 17th day of April, 1928, filed with the United States District Court for the District of Arizona in the Clerk's office thereof, as a part of this proceeding, said schedule showing only one creditor of the said [32] bankrupt, namely, J. J. Mackay, and that said oath to said schedule was

false as to a material fact in this, that in truth and in fact, there was another creditor of the said bankrupt, namely, The First National Bank of Arizona, a banking corporation which held a promissory note of said bankrupt for the sum of Seven Hundred Fifty (\$750.00) Dollars, dated April 7, 1928, which promissory note was at that time unpaid, a liability of said estate and secured by a chattel mortgage upon one Hudson car belonging to the bankrupt, described as 1928 Hudson Sedan, Motor # 495579, Serial #799342, executed by said bankrupt on the 7th day of April, 1928, said car not being scheduled as an asset of said estate, and the amount of Six Hundred Fifty (\$650.00) Dollars of the consideration of said note not having been satisfactorily accounted for in these proceedings.

(b) In that on, to wit, the 17th day of April, 1928, the said bankrupt, George W. Shute, did knowingly and fraudulently before one R. E. Conger, a notary public in and for the County of Maricopa, State of Arizona, subscribe to and make a false oath to Schedule B of the schedule of his liability in this estate, in that after being duly sworn, he did declare the said schedule to be a statement of all his assets, both real and personal, in accordance with the Acts of Congress relating to bankruptcy, in that in said Schedule B he listed as [33] his entire assets, real estate of the value of Two Hundred Fifty (\$250.00) Dollars; books, prints, and pictures of the value of Twenty-five (\$25.00) Dollars; deposits of money in bank and elsewhere, of

Fifteen and 67/100 (\$15.67) Dollars; and certain mining stocks listed as of no market value; making a total of non-exempt assets listed of Two Hundred Ninety and 67/100 (\$290.67) Dollars; and exempt property as follows: household goods of the value of Two Hundred Fifty (\$250.00) Dollars, and other personal property, consisting of a law library and office fixtures of the value of Seven Hundred Fifty (\$750.00) Dollars, when in truth and in fact his said assets at that time were in excess of the sum of, to wit, Thirty Thousand (\$30,000.00) Dollars; the omission of assets from said schedule being more particularly described as follows, to wit:

1. One Hudson car described as 1928 Hudson Sedan, Motor #495579, Serial #799342, of the value of \$900.00.

2. One life insurance policy upon the life of the bankrupt as follows: Policy #3310053, issued by the Mutual Life Insurance Company of New York, dated May 25, 1924, of the cash surrender value of \$746.85.

3. Savings account in the First National Bank of Arizona at Phoenix, Arizona, being Account #19061, in the name of Jessie M. Shute, wife of said bankrupt, [34] against which account said bankrupt retained the right to check, the said savings account containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of \$1162.30.

4. One phonograph of the value of \$200.00.

5. The sum of \$250.00, deposited by the bankrupt with one Arthur LaPrade during the month of December, 1927.

6. One Essex car described as Essex Coach, Serial #640003, of the value of \$600.00.

7. The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, \$5,000.00.

8. One certain contract entered into by and between one Wesley Goswick and the bankrupt, on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of \$20,000 out of the proceeds of the sale by the said Wesley Goswick of a cinnabar mining property consisting of twenty unpatented mining claims located upon or near what is known as Slate Creek in the County of Gila, State of Arizona, the title to said property being [35] in the name of said Goswick, and the sale thereof being made to one L. E. Foster, for the sum of \$200,000, payable as follows: \$5,000 on the 8th day of December, 1926; \$10,000 on or before six months from the 8th day of December, 1926; \$20,000 on or before one year from the 8th day of December, 1926; \$82,500 on or before 18 months from the 8th day of December, 1926, and \$82,500 on or before two years from the 8th day of December, 1926, less

certain sums to be paid monthly by the purchaser of said property and less certain royalties which were to be paid by the purchaser as they were received on the smelting returns of the ore taken from said mine, a copy of which said contract between said Goswick and said Foster being held in escrow in the Old Dominion Bank of Globe, Arizona; the said mining property having been owned jointly by the said Wesley Goswick and one William A. Packard, with the exception of such interest as the said bankrupt had therein, which interest of the bankrupt under said contract amounted to the said sum of \$20,000, and was payable in an amount of 10% of the payments made by the purchaser at the time they were made by the purchaser; the amount of \$16,500 being due on said contract to said bankrupt on the date of the [36] filing of the petition of bankruptcy herein.

9. An undivided partnership interest in the assets of the firm of Armstrong, Lewis & Kramer, of which firm the said bankrupt was a member; the interest of the said bankrupt in the assets of said firm being of the estimated value of Five Thousand (\$5,000.00) Dollars.

That said oath to said Schedule B was false as to a material fact in this, that said assets of said bankrupt so omitted from his said schedule were assets belonging to said bankrupt estate, the existence of which said bankrupt was by said omission conceal-

ing from the officers of the bankruptcy court in charge of said proceedings.

(c) In that on, to wit, the 7th day of May, 1928, the said bankrupt, George W. Shute, did knowingly and fraudulently before one R. E. Conger, a notary public in and for the County of Maricopa, State of Arizona, subscribe to and make a false oath to Schedule B of the Amended Schedule of his liabilities in this estate, which said Amended Schedule was on the 8th day of May, 1928, filed with the United States District Court for the District of Arizona, in the Clerk's office thereof, as a part of this proceeding; in that after being duly sworn, he did declare the said Amended Schedule to be a statement of all his assets, both real and personal, in accordance with the Acts of Congress relating to bankruptcy; and that in said Schedule B of said Amended Schedule he [37] listed as his entire assets real estate of the value of Two Hundred Fifty (\$250.00) Dollars; books, prints, and pictures of the value of Twenty-five (\$25.00) Dollars; deposits of money in banks and elsewhere, Fifteen and 67/100 (\$15.67) Dollars; certain mining stocks listed as of no market value, and a twenty-five per cent (25%) interest in the net earnings of Armstrong, Lewis & Kramer, as shown on the books of the firm from the 1st day of April, 1927, the value of said interest not being stated; and a twenty per cent (20%) interest in the office equipment of Armstrong, Lewis & Kramer of the value of Seven Hundred Sixty-nine and 15/100 (\$769.15) Dollars; making a total value of non-exempt assets listed of One Thousand

Fifty-nine and 82/100 (\$1,059.82) Dollars, exclusive of said partnership interest and exempt property as follows: Household goods of the value of Two Hundred Fifty (\$250.00) Dollars; and other personal property consisting of a law library and office fixtures of the value of Seven Hundred Fifty (\$750.00) Dollars; when in truth and in fact his said assets at that time were in excess of the sum of Thirty Thousand (\$30,000.00) Dollars; the omission of assets from said schedule being more particularly described as follows, to wit:

1. One Hudson car described as 1928 Hudson Sedan, Motor #495579, Serial #799342, of the value of \$900.00.

2. One life insurance policy upon the life of the bankrupt as follows: Policy #3310053, issued by the Mutual Life Insurance [38] Company of New York, dated May 25, 1924, of the cash surrender value of \$746.85.

3. Savings account in the First National Bank of Arizona at Phoenix, Arizona, being Account #19061, in the name of Jessie M. Shute, wife of said bankrupt, against which account said bankrupt retained the right to check, said savings account containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of \$1162.30.

4. One phonograph of the value of \$200.00.

5. The sum of \$250.00, deposited by the bankrupt with one Arthur LaPrade during the month of December, 1927.

6. One Essex car described as Essex Coach, Serial #640003, of the value of \$600.00;

7. The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, \$5,000.00.

8. One certain contract entered into by and between one Wesley Goswick and the bankrupt, on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive [39] the sum of \$20,000 out of the proceeds of the sale by the said Wesley Goswick of a cinnabar mining property consisting of twenty unpatented mining claims located upon or near what is known as Slate Creek in the County of Gila, State of Arizona, the title to said property being in the name of said Goswick, and the sale thereof being made to one L. E. Foster, for the sum of \$200,000 payable as follows: \$5,000 on the 8th day of December, 1926; \$10,000 on or before six months from the 8th day of December, 1926; \$20,000 on or before one year from the 8th day of December, 1926; \$82,500 on or before 18 months from the 8th day of December, 1926, and \$82,500 on or before two years from the 8th day of December, 1926, less certain sums to be paid monthly by the purchaser of said property and less certain royalties which were to be paid by the purchaser as they were received

on the smelting returns of the ore taken from said mine, a copy of which said contract between said Goswick and said Foster being held in escrow in the Old Dominion Bank of Globe, Arizona; the said mining property having been owned jointly by the said Wesley Goswick and one William A. Packard, with the exception of such interest as the said bankrupt had therein, which interest of the bankrupt [40] under said contract amounted to the said sum of \$20,000, and was payable in an amount of ten per cent (10%) of the payments made by the purchaser at the time they were made by the purchaser; the amount of \$16,500 being due on said contract to said bankrupt on the date of the filing of the petition in bankruptcy herein.

That said oath to said Amended Schedule B was false as to a material fact in this, that said assets of said bankrupt so omitted from his said schedule were assets belonging to said bankrupt estate, the existence of which said bankrupt was by said omission concealing from the officers of the bankruptcy court in charge of said proceedings.

TWELFTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act, in that he has knowingly and fraudulently, after the filing of the petition in bankruptcy herein withheld from the trustee in the bankruptcy estate documents and papers affecting and relating to the property and affairs of the bankrupt, to the possession of which the trustee is entitled, and the possession of which

is necessary to the trustee for the purpose of collecting in the assets of the bankrupt estate, said documents and papers consisting of:

(a) One lease in which the bankrupt is the lessee of a residence and lot located at 66 West Lynwood Street, in the City of Phoenix, County of Maricopa, [41] State and District of Arizona, the said lease having had paid thereon by said bankrupt prior to the filing of the petition in bankruptcy herein the sum of One Hundred Fifty (\$150.00) Dollars for unexpired rent thereon, (with the exception of two days' rent at the rate of Seventy-five (\$75.00) Dollars per month), the same being an asset of said estate, and the title to said lease having passed to the trustee by operation of law as of the date of the filing of the bankrupt's petition in bankruptcy herein.

(b) One promissory note signed by Joseph E. Noble, dated the 18th day of October, 1927, for the principal sum of Twelve Hundred (\$1,200.00) Dollars, payable to the First National Bank of Arizona, signed by said Joseph E. Noble as principal, and by G. W. Shute, the bankrupt, as surety, which said promissory note was on or about the 27th day of February, 1928, paid by said bankrupt, and which promissory note is an asset of the bankrupt estate, title of which passed to the trustee herein as of the date of the filing of the petition in bankruptcy herein by the said bankrupt.

THIRTEENTH: For the reason that he has failed to keep books of account or records from which his financial condition and business transac-

tions might be ascertained, and has concealed records from which his business transactions might be ascertained. [42]

FOURTEENTH: For the reason that he has at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy transferred real property owned by himself from himself to his wife, with intent to hinder, delay and defraud his creditors; such property being situated in the County of Gila, State of Arizona, and more particularly described as follows, to wit: Lots, 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite; that said transfer was accomplished in the following manner, to wit: That the said bankrupt was the owner of the above-described property as the community property of himself and wife ever since the 20th day of December, 1920, when the same was acquired by him by the payment thereof of the consideration for the purchase thereof from the community funds of himself and the said Jessie M. Shute, acquired by said bankrupt after his marriage to said Jessie M. Shute, and by the giving of a joint promissory note and mortgage as a part of the consideration for the said purchase to one Mary E. Holmes for the sum of Thirty-five Hundred (\$3,500.00) Dollars, which promissory note and mortgage was a community liability, the title to said property having been taken in the name of the said Jessie M. Shute, but not as the separate property of the said Jessie M. Shute, and having stood of record as the community property of the bankrupt and his wife from the time

of its acquirement up to the time of the filing of the petition in bankruptcy herein. That in, to wit, the early part of the year, 1928, the said bankrupt, while insolvent within the meaning and intent of the Bankruptcy Act, and not having sufficient property to pay his debts, transferred the above-described property to his said wife, Jessie M. Shute, by disclaiming any interest therein in her favor, and by relinquishing [43] possession thereof to her; all of which was done in contemplation of bankruptcy, and with the intent to hinder, delay and defraud his creditors. That subsequent to the filing of his said petition in bankruptcy, he has continued to aid his wife, the said Jessie M. Shute, in withholding possession of said premises from the trustee of said estate, and employed counsel for her to prevent the delivery of same to the trustee herein, and to prevent the payment of the rents thereof to the trustee herein; that the above-described real estate was and is of the value of, to wit, the sum of Five Thousand (\$5,000.00) Dollars, and had, and has, a rental value of, to wit, the sum of Fifty (\$50.00) Dollars per month, and has been actually rented at Fifty (\$50.00) Dollars per month ever since the filing of the voluntary petition in bankruptcy by the bankrupt; that subsequently to his adjudication in bankruptcy the said bankrupt caused his wife, the said Jessie M. Shute, to file a declaration of homestead upon said premises, and himself had the same recorded in the office of the County Recorder of Gila County on the 18th day of June, 1928, thereby clouding the title of your trustee and carrying out

the disclaimer and relinquishment of his right and title to the real estate and improvements as hereinbefore set forth, in favor of his wife, the said Jessie M. Shute, all of which was done with the intent to hinder, delay and defraud his creditors.

FIFTEENTH: For the reason that he has at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy transferred personal property owned by himself to one A. E. England, with intent to hinder, delay, and defraud his creditors; that said property consisted of one automobile of the value of, to wit, Nine Hundred (\$900.00) [44] Dollars, and more particularly described as follows, to wit: 1928 Hudson Sedan, Motor #495579, Serial #799342; that said transfer was accomplished by delivering the said automobile to the said A. E. England to hold and keep as his own, and to store the same in the building occupied by the A. E. England Motors in the City of Phoenix, County of Maricopa, State of Arizona; that said transfer was made in the early part of the year, 1928, and was made in contemplation of bankruptcy; that the said automobile remained in the custody of the said A. E. England up to and subsequent to the adjudication in bankruptcy of the bankrupt in the above-entitled matter until a time some weeks subsequent to said adjudication when the same was purchased from your trustee by the said bankrupt for the sum of Nine Hundred (\$900.00) Dollars.

SIXTEENTH: For the reason that he has at a time subsequent to the first day of the twelve

months immediately preceding the filing of his petition in bankruptcy concealed and permitted to be concealed personal property belonging to said bankrupt and bankrupt estate, more particularly described as follows: A savings account numbered 19061, in the First National Bank of Arizona, standing in the name of Jessie M. Shute, but being the community property of said bankrupt, and said Jessie M. Shute, and consisting of funds acquired after marriage by the said bankrupt, of the sum of Eleven Hundred Sixty-two and 30/100 (\$1162.30) Dollars; \$1,000 or more of which sum was by the said bankrupt withdrawn or permitted to be withdrawn from the said account after the same had been the subject of testimony and examination at a meeting of creditors of the said bankrupt held on the 29th day of May, 1928, for the purpose of placing the same beyond the reach of the trustee and of the Court of Bankruptcy, and which sum has been secreted and concealed from the trustee and the officers of the Court [45] of Bankruptcy, and thereby depriving the estate of said bankrupt of said sum of One Thousand (\$1,000.00) Dollars, with intent to hinder, delay and defraud the creditors of said bankrupt.

SEVENTEENTH: For the reason that he has at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy concealed and permitted to be concealed personal property belonging to said bankrupt and bankrupt estate, more particularly described as follows: By receiving and secreting in, to wit, the

month of June, 1928, the sum of to wit, Eight Thousand (\$8,000.00) Dollars, paid to said bankrupt by one Wesley Goswick, upon a contract entered into by said Goswick, and said bankrupt prior to the filing of the petition in bankruptcy by the bankrupt herein, which said contract passed by operation of law to your trustee in bankruptcy in these proceedings at the time they were instituted, and which sum of, to wit, Eight Thousand (\$8,000.00) Dollars was the property of your trustee in bankruptcy and collected by the said bankrupt without the knowledge or consent of the trustee and he has ever since said time concealed the same from the trustee and the officers of the Bankruptcy Court with intent to hinder, delay and defraud the creditors of said bankrupt.

EIGHTEENTH: For the reason that he has in the course of the proceedings in bankruptcy refused to obey a lawful order of the Court, to wit, the order of said bankrupt court made on the 1st day of May, 1928, requiring said bankrupt to file new schedules or to so amend said schedules theretofore filed by him to conform to the facts and the provisions of the Bankruptcy Act; that said bankrupt subsequent to said order filed what was termed an amended schedule, but that said amended schedule did not comply with [46] said order of the Court dated May 1, 1928, as aforesaid, and did not conform to the facts and the provisions of the Bankruptcy Act, in that said bankrupt knowingly and fraudulently omitted from said amended schedule the following assets belonging to said bankrupt estate, to wit:

1. One Hudson car described as 1928 Hudson Sedan, Motor #495579, Serial #799342, of the value of \$900.00.

2. One life insurance policy upon the life of the bankrupt as follows, Policy #3310053, issued by the Mutual Life Insurance Company of New York, dated May 25th, 1924, of the cash surrender value of \$746.85.

3. Savings account in the First National Bank of Arizona at Phoenix, Arizona, being account #19061, in the name of Jessie M. Shute, wife of said bankrupt, against which account said bankrupt retained the right to check, said savings account containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of \$1162.30.

4. One phonograph of the value of \$200.00.

5. The sum of \$250.00, deposited by the bankrupt with one Arthur LaPrade during the month of December, 1927.

6. One Essex car described as Essex Coach, Serial #640003, of the value of \$600.00.

7. The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, \$5,000.00.

8. One certain contract entered into by and between one Wesley Goswick and the bankrupt, on or [47] about the 8th day of December, 1926, under and by virtue of the terms of which the

said bankrupt was to receive the sum of \$20,000 out of the proceeds of the sale by the said Wesley Goswick of a cinnabar mining property consisting of twenty unpatented mining claims located upon or near what is known as Slate Creek in the County of Gila, State of Arizona, the title to said property being in the name of said Goswick, and the sale thereof being made to one L. E. Foster, for the sum of \$200,000, payable as follows: \$5,000 on the 8th day of December, 1926; \$10,000 on or before six months from the 8th day of December, 1926; \$20,000 on or before one year from the 8th day of December, 1926; \$82,500 on or before 18 months from the 8th day of December, 1926, and \$82,500 on or before two years from the 8th day of December, 1926, less certain sums to be paid monthly by the purchaser of said property and less certain royalties which were to be paid by the purchaser as they were received on the smelting returns of the ore taken from said mine, a copy of which said contract between said Goswick and said Foster being held in escrow in the Old Dominion Bank of Globe, Arizona; the said mining property having been owned jointly by the said Wesley Goswick and one William A. Packard, with the exception of such interest as the said bankrupt had therein, which interest of the bankrupt under said contract amounted to the said sum of \$20,000, and was payable in an amount of ten per cent (10%) of the payments made by the purchaser

at the [48] time they were made by the purchaser; the amount of \$16,500 being due on said contract to said bankrupt on the date of the filing of the petition in bankruptcy herein.

NINETEENTH: For the reason that he has failed to explain satisfactorily losses of assets and deficiency of assets to meet his liability in this, that for the period commencing January 1st, 1927, and up to and including the date of the filing of his petition in bankruptcy herein by said bankrupt, to wit, the 17th day of April, 1928, said bankrupt had cash assets in the form of income and other amounts received by him during said period of an amount of not less than Twenty-one Thousand Six Hundred Ninety-five and 20/100 (\$21,695.20) Dollars; and that after deducting from said amount all expenditures and disbursements thereof testified to by said bankrupt under examination before the referee in bankruptcy at the first meeting of creditors, or revealed from such statements and data as have been produced by said bankrupt in said bankruptcy proceedings, there still remains an amount of not less than Seven Thousand (\$7,000.00) Dollars, received by said bankrupt during said period of time, which is totally unaccounted for and the disappearance of which said bankrupt has failed to explain satisfactorily or at all; and said bankrupt has testified under oath at his examination before the referee in bankruptcy, at the first meeting of creditors in said bankruptcy proceedings, that he cannot explain such deficiency.

WHEREFORE, objection is made to the granting of such application for a discharge.

THOMAS W. NEALON,
Trustee in Bankruptcy Objecting to Discharge.
[49]

United States of America,
District of Arizona,—ss.

Thomas W. Nealon, being the trustee in bankruptcy above named, does hereby make solemn oath that the statements contained in the foregoing specifications of objection to discharge of bankrupt, subscribed by him, are true.

THOMAS W. NEALON.

Subscribed and sworn to before me this 19th day of December, 1928.

[Seal]

BESS M. WHITE,
Notary Public.

My commission expires June 18, 1931.

[Endorsed]: Filed Dec. 19, 1928. [50]

[Title of Court and Cause.]

CREDITOR'S SPECIFICATIONS OF OBJECTION TO DISCHARGE OF BANKRUPT.

J. J. Mackay, of Phoenix, County of Maricopa, State of Arizona, in the District of Arizona, a creditor of the above-named bankrupt, having a debt against said bankrupt subject to discharge in bankruptcy, and whose claim against said bank-

rupt has been duly filed and allowed in these proceedings, does hereby oppose the granting to said bankrupt of a discharge from his debts, and for the grounds of such opposition does file the following specifications:

FIRST: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act, in that he has knowingly and fraudulently concealed from his trustee property belonging to his estate in bankruptcy as follows:

- (a) One Hudson car, described as Hudson Sedan, Motor Number 495579, Serial Number 799342, owned by said bankrupt at the time of filing his petition in bankruptcy, and by him placed in the custody of A. E. England shortly prior to bankruptcy with the intention that he and the said A. E. England should keep said car concealed from said Trustee; and further, by knowingly and [51] fraudulently omitting to schedule said car as an asset of said estate, either in the first schedule of his assets and liabilities filed by him herein, or in the amended schedule of his assets and liabilities filed by him herein, which said amended schedule was filed after an order made by the court upon written mo-

tion of a creditor requiring him so to do. The value of said Hudson car was, to wit, the sum of \$900.00. . . \$900.00

(b) One life insurance policy upon the life of the bankrupt as follows: Policy No. 3310053, said policy having been issued by the Mutual Life Insurance Company of New York, dated May 25th, 1924, said life insurance policy being one in which he had the right to change the beneficiary without the consent of the beneficiary named therein, and which life insurance policy had a cash surrender value, at the time of the filing of the debtor's petition in bankruptcy of \$746.85, said concealment having been made by knowingly and fraudulently omitting the same from his schedule of assets and by inserting in the form used, at the place for the listing of insurance policies, the word "None"; and by further stating, under oath, during the bankruptcy examination in the first meeting of creditors that the said policy did not have any loan value; and by failing and refusing to [52] produce said policy until de-

	\$900.00
Brought forward	\$900.00

mand was made therefor by said trustee at the continued first meeting of creditors on May 29th, 1928 \$746.85

(c) A savings account in the First National Bank of Arizona, at Phoenix, Arizona, being account #19061, in the name of Jessie M. Shute, wife of said bankrupt, but against which account said bankrupt retained the right to check, said savings account being made up from funds acquired by the bankrupt subsequent to the marriage of said bankrupt and said Jessie M. Shute, and containing, on the 4th day of January, 1928, the sum of \$3,687.50, and from which account there was withdrawn, on the 27th day of February, 1928, the sum of \$1,235.00, paid to the First National Bank of Arizona as payment of a promissory note of one Joseph E. Noble, dated October 18th, 1927, payable to said bank, and which note was signed by said bankrupt, G. W. Shute, as security; and from which savings account there was withdrawn, three days before said bankrupt filed his voluntary petition in bankruptcy herein, on, to wit, April 14, 1928, the sum of \$1,500.00, which amount

was delivered to the son-in-law of said bankrupt, namely, Leslie Creed, leaving the amount of the said savings account in said bank on the day of filing said petition in bankruptcy, the sum of \$1,162.30;

Forward [53]	\$1,646.85
Brought forward	\$1,646.85

that said concealment was effected by knowingly and wilfully omitting any mention of said savings account or deposit from his schedules filed in said bankruptcy proceedings, and said omission being made for the purpose of concealing the existence thereof from the trustee and thereby hiding from him the said sum of money which was the community property of the said bankrupt and his wife, the said Jessie M. Shute, and part of said bankrupt estate; and by knowingly and fraudulently concealing from said trustee the existence of said promissory note of Joseph E. Noble, paid by said bankrupt as aforesaid, and by knowingly and fraudulently concealing from said trustee the transfer of said amount of \$1500.00 from said savings account to said Leslie Creed...

\$3687.50

(d) One certain contract entered into by and between one Wesley Goswick and the bankrupt, on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of \$20,000 out of the proceeds of the sale by the said Wesley Goswick of a cinnabar mining property consisting of twenty unpatented mining claims located upon or near what is known as Slate Creek in the County of Gila, State of Arizona, the title to said property being in the name of said Goswick, and the

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Forward [54]	\$5,334.35
Brought forward	\$5,334.35

sale thereof being made to one L. E. Foster, for the sum of \$200,000, payable as follows: \$5,000 on the 8th day of December, 1926; \$10,000 on or before six months from the 8th day of December, 1926; \$20,000 on or before one year from the 8th day of December, 1926; \$82,500 on or before 18 months from the 8th day of December, 1926, and \$82,500 on or before two years from the 8th day of December, 1926, less certain sums to be paid monthly by the purchaser of said property and less certain

royalties which were to be paid by the purchaser as they were received on the smelting returns of the ore taken from said mine, a copy of which said contract between said Goswick and said Foster being held in escrow in the Old Dominion Bank of Globe, Arizona; the said mining property having been owned jointly by the said Wesley Goswick and one William A. Packard, with the exception of such interest as the said bankrupt had therein, which interest of the bankrupt under said contract amounted to the said sum of \$20,000, and was payable in an amount of 10% of the payments made by the purchaser at the time they were made by the purchaser; said contract having been recognized by the said Wesley Goswick and the said William A. Packard, and the payment of \$500 having been made thereon, on or about the 8th day of December, 1926, to the said bankrupt by the said Wesley Goswick and William A. Packard, and \$1,000

Forward [55]	\$5,334.35
Brought forward	\$5,334.35
having been on or about the 8th day of June, 1927, paid thereon to the	

said bankrupt by the said Goswick and said Packard, and the further sum of \$2,000 being paid to the said bankrupt in the month of December, 1927, by the said Wesley Goswick, for and on behalf of the said Wesley Goswick and William A. Packard; and subsequent to the adjudication in bankruptcy in, to wit, the month of June, 1928, a further sum of \$8,000 having been paid to said bankrupt, on said contract, by the said Wesley Goswick for and on behalf of himself and said William A. Packard; the said Wesley Goswick having on, to wit, August 20, 1927, assumed the payment to the said bankrupt of all subsequent payments to him under said contract on behalf of himself and said Packard, and there being still due to the trustee in bankruptcy, as the successor in interest of the said bankrupt, a further sum which, with the payments made aforesaid to said bankrupt, would make a total sum of \$20,000, said sum, by said original contract, having become due on December 8, 1928, but some extension of the time of the making of the payment of the sum due by the purchaser thereon having been made prior to

that time without the consent of your trustee in bankruptcy; the existence of the said contract and of the payments made thereon and to be made thereon having been knowingly and fraudulently concealed from your trustee by the knowing and wilful omission by the bankrupt

Forward [56]	\$5,334.35
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Brought forward	\$5,334.35
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from his schedules of said property as one of the assets of said estate, and said omission being made with the intent and design of keeping your trustee in ignorance of the existence thereof and of the payments made and to be made thereon; and the further concealment of said contract and of payments made thereunder and to be made thereunder, by the testimony under oath of said bankrupt at the first meeting of creditors at which said bankrupt testified that he had never received from said Goswick any sum, in connection with the sale of said cinnabar property, except the amount of \$500, which amount he testified was a gift to him made in the month of December, 1927, and said bankrupt further testified that no further or

other amounts were payable to him by said Goswick, and that he, said bankrupt, had no interest in said option and sale of said mining property made by said Goswick to said L. E. Foster..... \$16,500.00

(e) The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as follows: Lots 1, 2, 3, 4 and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, \$5,000, which said property was, up to the time that the title thereof passed to your trustee by operation of law on the filing of the petition in bank-

Forward [57] \$21,834.35

Brought forward \$21,834.35

ruptcy, the property of said bankrupt and purchased with funds acquired by him subsequent to the marriage of said bankrupt to the said Jessie M. Shute, together with a purchase money mortgage given by himself and the said Jessie M. Shute, as a part of the consideration thereof, the said mortgage being a community liability of the said bankrupt; said concealment having been effected by the bankrupt knowingly

and fraudulently omitting any description thereof from his schedules in bankruptcy filed herein, the said property being situated in the County of Gila, and the said bankruptcy proceedings being in Maricopa County, and thus withholding from the trustee any information as to its existence, and further by the said bankrupt having in, to wit, the month of April, 1928, fraudulently and with the intent to conceal said property from the said trustee, disclaimed any interest therein in favor of his wife, Jessie M. Shute, and delivered possession thereof to her, and having since said time withheld possession thereof from said trustee and prevented the collection of the rents thereof by the said trustee, which rents amounted to the sum of, to wit, \$50.00 per month; and further by causing the said Jessie M. Shute, subsequent to the adjudication of bankruptcy herein, to file a declaration of homestead on said premises

Forward [58]	\$21,834.35
Forward	\$21,834.35

in her own name and by employing for and on behalf of the said Jessie M. Shute an attorney at law, one

Clifton Matthews, of Globe, Arizona, to obstruct the securing of the possession thereof and the rents therefrom, by the trustee; the said declaration of homestead having been filed in the office of the County Recorder of said Gila County, Arizona, on the 18th day of June, 1928, at 4:45 o'clock P. M., in Book 1 of Homesteads, pages 121 and 122, at the request of said bankrupt..... \$5,000.00

(f) One Essex car, described as Essex Coach, Serial Number 640003, of the value of, to wit, the sum of \$600.00, the property of said bankrupt estate, having been concealed by said bankrupt knowingly and fraudulently omitting the same from his schedules, with the intention of concealing from the trustee the existence thereof, the said car being further concealed by the placing of a license and certificate of title thereof in the name of said Jessie M. Shute, upon the pretense that the same was a gift by the bankrupt to said Jessie M. Shute, said bankrupt having been totally insolvent and not having sufficient assets to pay his

debts for more than ten (10) years
 prior to the alleged gift..... \$600.00

(g) The sum of \$995.00, being the

Forward [59] \$27,434.35

Brought forward \$27,434.35

amount which said bankrupt paid during the month of December, 1927, to A. E. England by check on the First National Bank of Arizona, signed by said G. W. Shute, bankrupt, as a payment on a car for one Virginia L. Wentworth, of Globe, Arizona, which payment said bankrupt testified, under oath, at the first meeting of creditors, on the 29th day of May, 1928, was made by him for said Virginia L. Wentworth in December, 1927, out of moneys paid to him by said Virginia L. Wentworth in December, 1927, but which money so paid to him by said Virginia L. Wentworth did not appear in any statement or data furnished said trustee by said bankrupt, and has never been accounted for by said bankrupt, but has been knowingly and fraudulently concealed by said bankrupt from said trustee..... \$995.00

(h) The sum of \$250, which said bankrupt knowingly and wilfully and with intent to conceal same from the

trustee omitted from his schedule of assets filed herein, which said sum of \$250 was a deposit made by said bankrupt with one Arthur LaPrade during the month of December, 1927, for the purpose of investment, and which subsequent to the adjudication in bankruptcy was returned to said bankrupt by said Arthur LaPrade. \$250.00

(i) One phonograph of the value of approximately \$200, which phono-

Forward [60] \$28,679.35
 graph said bankrupt knowingly and fraudulently concealed from said trustee by omitting same from his schedule of assets filed herein and by testifying under oath at the first meeting of creditors that he had no musical instrument \$200.00

The total amount of the concealment of property from your trustee by the methods hereinabove described being of the value of to wit, the sum of \$28,879.35 \$28,879.35

SECOND: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the bankruptcy act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to

testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. You have a car at the present time, have you not?

A. I bought a car when I came down here, a Hudson, from my brother-in-law, and I paid \$100 a month on it until it was paid for; then I traded it in on another car from England, and then traded that in on another one, which is the car I have now; there is probably \$1,000 due on it. [61]

That said answer of said bankrupt was false as to a material fact in this, that the entire purchase price of said last-named car had been paid, and that there was no amount whatever due to said England thereon, and that said car was at said time an asset of said bankrupt estate, which was being concealed from said trustee by said bankrupt and said A. E. England, and said answer was given for the purpose of deceiving the trustee into believing that the bankrupt estate had no interest in said car by reason of the fact that \$1,000 of the purchase price was due thereon at said time, when in truth and in fact no part of the purchase price was due thereon at said time.

THIRD: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the bankruptcy act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. (Referring to Hudson car owned by said bankrupt at the time of filing his petition in bankruptcy.) You have made no payments except the work you have done for him?

A. That is about the way it would figure out; I don't think I made any cash payments at all.

[62]

That said answer as given by said bankrupt was false as to a material fact in that cash payments had been made on said Hudson car by said bankrupt, as said bankrupt well knew at the time he so answered said question, and that said car was entirely paid for, and was at the time said answer was given an asset of said estate, and should have been delivered by said bankrupt, to said trustee, and that said answer was knowingly and fraudu-

lently given by said bankrupt for the purpose of deceiving the trustee into the belief that a vendor's lien existed against said car in excess of the value thereof, when in truth and in fact said car was entirely paid for.

FOURTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. You did not schedule it? (Referring to Hudson car owned by said bankrupt at the date petition in bankruptcy was filed).

A. I turned it back. [63]

That said answer so given by said bankrupt was false as to a material fact because, in truth and in fact, said car had not been turned back, but was being held by said A. E. England, acting in collusion with the bankrupt, for the use of said bankrupt and for the purpose of concealing the same from the trustee of said bankrupt estate,

and the said car was not scheduled for the purpose of further aiding said bankrupt and said England in the concealment of said car from the trustee.

FIFTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. Since that time (January, 1924) how much have you received from the firm's business? (Referring to the firm of Armstrong, Lewis & Kramer).

A. Well, I can only give an approximation, but I think it is pretty close. I think the first year I received about \$5,500; that was 1924; in 1925 I received between \$5,500 and \$6,000; I think in 1926 it was about \$8,000; I think the last year I received somewhere in the neighborhood of \$10,000; that is about right, I think. [64]

That said answer as given by said bankrupt was

false as to a material fact in this that said bankrupt stated that he received from the firm's business, being the firm of Armstrong, Lewis & Kramer, in which said bankrupt was, and had been since the year 1924, a partner, in the neighborhood of \$10,000 in the year 1927, when in truth and in fact said bankrupt received from the business of said firm of Armstrong, Lewis & Kramer, during the year 1927, the amount of \$15,250, and that the difference between said amount of \$10,000, which said bankrupt testified he had received from said firm's business during the year 1927, and said amount of \$15,250, which was the true amount received by said bankrupt from said firm's business during the year 1927, to wit, the sum of \$5,250.00, constituted an asset of said bankrupt estate which should have been applied to the indebtedness of said bankrupt, and which amount it was incumbent upon said bankrupt to account for in order to satisfactorily explain the deficiency of his assets to meet his liabilities, and the amount of his receipts, the dissipation of which it was incumbent on him to explain satisfactorily in said bankruptcy proceedings, and that said answer was knowingly and fraudulently given by said bankrupt for the purpose of deceiving said trustee as to the true amount received by him from the firm of Armstrong, Lewis & Kramer during the year 1927.

SIXTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when

examined before the referee at the first [65] meeting of creditors, after having been duly sworn by the referee in bankruptcy to testify to the whole truth in said matter, he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. How much have you drawn from the firm (being the firm of Armstrong, Lewis & Kramer) since the first of the year?

A. I think about \$500 a month. There has been no dividend in April.

That said answer of said bankrupt was false as to a material fact in this, that said bankrupt stated that he had drawn about \$500 a month since the first of the year (being the year 1928) when in truth and in fact said bankrupt had received from said firm of Armstrong, Lewis & Kramer between the first day of January, 1928, and the date of filing said petition in bankruptcy on April 17, 1928, the amount of \$2,450.00; that said bankrupt further stated that there had been no dividend in April (being April, 1928) when in truth and in fact said bankrupt had received from said firm of Armstrong, Lewis & Kramer a dividend in the amount of \$775.00 on the 10th day of April, 1928, which said amount of \$775.00 said bankrupt had

in his possession seven (7) days before filing his petition in bankruptcy, and that it was incumbent upon said bankrupt to account for the expenditure of said sum of \$775.00 in order to satisfactorily explain the deficiency of his assets to meet his liabilities, and the disappearance of all the bankrupt's funds in bank except the [66] amount scheduled by him in his voluntary petition in bankruptcy filed April 17, 1928, to wit, the amount of \$15.67.

SEVENTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a false statement in and in relation to his proceedings in bankruptcy as follows:

That he has knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. In addition to that (referring to receipts from the firm of Armstrong, Lewis & Kramer) then, there should be other amounts that you have received in order to make the books complete?

A. That depends on the way you look at it. You will remember I told you about the little

block of stock we sold after we came down here. There was also a little Mrs. Shute owned in the Iron-Blossom, I think it was called; there was 100 shares of that. We sold that and I used the money. There may be two or three small instances like that, but except in very small items of that kind, the income was from the firm.

That said answer of said bankrupt was false as to a material fact in this, that said bankrupt received, in truth and in fact, during the period between January 1st, 1926, and the date of the filing of his petition in bankruptcy, to wit, the 17th day of April, 1928, other income outside of the income received from the firm, in large amounts, [67] to wit, the amount of at least \$4,000 during said period of time, and that in making said statement and answering said question as he did, said bankrupt was concealing said amount of \$4,000 which he had received in income independent of the income received from the firm of Armstrong, Lewis & Kramer, during the period from the first day of January, 1926, to the 17th day of April, 1928, the receipt of \$3,000 of said sum of \$4,000 being payments made by one Wesley Goswick to said bankrupt during the year 1927, on a contract existing between said bankrupt and said Wesley Goswick, which contract passed to the trustee by operation of law upon the filing of the voluntary petition in bankruptcy filed herein by said bankrupt, but the existence of which contract was concealed from the trustee, and that said answer was knowingly

and fraudulently made by said bankrupt for the purpose of deceiving said trustee into believing that he had not received any income outside of the income received from the firm of Armstrong, Lewis & Kramer, and that it was material that said bankrupt should truthfully report his entire income during said period and account for same in order to satisfactorily explain in said bankruptcy proceedings the deficiency of his assets to meet his liabilities.

EIGHTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made a false oath and rendered a [68] false statement in and in relation to his proceedings in bankruptcy, as follows:

That he knowingly and fraudulently made a false oath in answering the following question propounded to him under examination at the first meeting of creditors, as answered by him:

Q. During all of this period (period said bankrupt had been with the firm of Armstrong, Lewis & Kramer) did you receive any large sums of money from any other source, other than those you have testified to?

A. I think I have testified to all of them, either at this hearing or the other one.

That the answer of said bankrupt to said question was false as to a material fact in this, that said bankrupt in truth and in fact had not testified as to amounts received by him during the period between January 1st, 1926, and the date of the filing of his petition in bankruptcy, to wit, the 17th day of April, 1928, and that in truth and in fact, said bankrupt had received during said period other income outside of the income received from the firm, in large amounts, to wit, the amount of at least \$4,000 during said period of time, and that said bankrupt had not testified at any time as to the receipt by him of said amount of \$4,000 received by him during said period, and that in making said statement and answering said question as he did, the said bankrupt was concealing said amount of at least \$4,000 which he had received in income independent of the income received from the firm of Armstrong, Lewis & Kramer during said period between the 1st day of January, 1926, and said 17th day of April, 1928, and that it was material that said bankrupt should truthfully report his entire income during said period and account for the same in order to explain, in the bankruptcy [69] proceedings, the deficiency of his assets to meet his indebtedness, and that said answer of said bankrupt was knowingly and fraudulently made for the purpose of deceiving said trustee into believing that said bankrupt had not received any large amounts of money from any other source than the firm of Armstrong, Lewis & Kramer.

NINTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act, in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made and rendered a false statement in and in relation to his proceedings in bankruptcy as follows:

That he knowingly and fraudulently made a false oath in answering the following questions propounded to him under examination at the first meeting of creditors, as answered by him:

Q. You have no interest in any mining property? A. None at all.

Q. Any mining claims? A. No.

Q. Have you represented any companies over there in any way as counsel from whom you have received fees since being in Phoenix?

A. I can not think of any. It would be on the books here if I have.

Q. You have received nothing that would not show on the books of Armstrong, Lewis & Kramer? A. I don't think so. [70]

Q. From Globe companies or from interests you have there? A. I don't think so.

That said answers of said bankrupt to said questions and each of said answers are false as to a material fact, in this, that said bankrupt had an interest in mining property at the time of filing

his petition in bankruptcy, to wit, a contract with one Wesley Goswick, whereby said bankrupt was to receive from said Wesley Goswick the sum of \$20,000, being 10% of the purchase price of \$200,000 to be paid by one L. E. Foster to said Wesley Goswick under a contract and agreement of sale whereby said Wesley Goswick agreed to sell and said L. E. Foster agreed to buy twenty unpatented mining claims located upon or near what is known as Slate Creek, in Gila County, Arizona, said contract between said Goswick and said Foster being in escrow in the Old Dominion Bank at Globe, Arizona, and by the terms of which said Foster agreed to pay said Goswick the sum of \$5,000 on the 8th day of December, 1926; \$10,000 on or before the 8th day of June, 1927; \$20,000 on or before the 8th day of December, 1927; \$82,500 on or before the 8th day of June, 1928, and \$82,500 on or before the 8th day of December, 1928, less certain amounts paid monthly and certain royalties to be credited on said purchase price; and that at the time said bankrupt so answered said questions as aforesaid he had received on account of said contract the amount of \$3,500.00, none of which appeared upon the books of the firm of Armstrong, Lewis & Kramer; that said bankrupt knowingly and fraudulently concealed the receipt of said amount and of said payments under said contract from the trustee in bankruptcy, and that it was material that said bankrupt should reveal said amount of \$3,500 and account for [71] the same in order to satisfactorily explain the deficiency of

his assets to meet his liabilities; and for the further reason that said bankrupt had further payments coming from said contract and said interest in said mining property, which were the property of the trustee of said bankrupt estate, and that by concealing the existence of said contract from said trustee in bankruptcy, said bankrupt was withholding assets from said estate which should properly be applied to the payment of the claims of said estate.

TENTH: For the reason that the bankrupt herein committed an offense punishable by imprisonment under the Bankruptcy Act in that, in the course of the proceedings in bankruptcy, when examined before the referee at the first meeting of creditors, after having been duly sworn to testify to the whole truth in said matter by said referee in bankruptcy, he has knowingly and fraudulently made and rendered a false statement in and in relation to his proceedings in bankruptcy, as follows:

That he knowingly and fraudulently made a false oath in answering the following questions propounded to him under examination at the first meeting of creditors, as answered by him:

Q. When was this \$500 payment received from Mr. Goswick?

A. In December, 1927.

Q. Have you ever received any other amounts from him?

A. Only for fees; they would go into the firm.

Q. This \$500 was not fees? A. No.

Q. Have you any interest in these options of Goswick's? A. No. [72]

Q. You do not expect to receive any other amounts from him other than this \$500?

A. No.

Q. If he should send you any more money you would be surprised, would you?

A. I most certainly would.

That said answers of said bankrupt to said questions were, and each of said answers was, false as to a material fact in this, that said bankrupt received from said Goswick during the month of December, 1927, a payment of \$2,000, and that the said bankrupt had received from said Goswick, at the time he so testified, other amounts, besides the sum of \$2,000 of, to wit, \$1500, in addition to said amount of \$500, the receipt of which was testified to by said bankrupt, and that at the time said bankrupt so testified he, in truth and in fact, had an interest in the options of the said Wesley Goswick herein referred to, in this, that said bankrupt had, at the time of filing his petition in bankruptcy, a contract with said Wesley Goswick, whereby said bankrupt was to receive from said Goswick the sum of \$20,000, being 10% of the purchase price of \$200,000 to be paid by one L. E. Foster to said Wesley Goswick under a contract and agreement of sale whereby said Goswick agreed to sell, and said Foster agreed to buy twenty unpatented mining claims located upon or near what is known as Slate Creek, in Gila County, Arizona, said contract be-

tween said Goswick and said Foster being in escrow in the Old Dominion Bank at Globe, Arizona, and by the terms of which said Foster agreed to pay said Goswick the sum of \$5,000 on the 8th day of December, 1926; \$10,000 on or before the 8th day of June, 1927; \$20,000 on or before the 8th day of December, 1927; \$82,500 on or before the 8th day [73] of June, 1928, and \$82,500 on or before the 8th day of December, 1928, less certain amounts paid monthly and certain royalties to be credited on said purchase price, and that at the time said bankrupt so answered said questions as aforesaid, he had received on account of said contract the amount of \$3,500, none of which appeared upon the books of the firm of Armstrong, Lewis & Kramer.

That said bankrupt knowingly and fraudulently so answered said questions in order to conceal from said trustee in bankruptcy the payments made and to be made to him under said contract, and that it was material that said bankrupt would reveal said amount of \$3,500 and account for the same in order to satisfactorily explain in said bankruptcy proceedings the deficiency of his assets to meet his liabilities; and for the further reason that said bankrupt had further payments coming to him under said contract and said interest in said mining property, which were the property of the trustee in bankruptcy of said estate, and said bankrupt was withholding assets of said estate which should properly be applied to the payment of the claims of the estate; that said bankrupt knowingly and fraudulently so testified that he had no interest in

the options of said Wesley Goswick in order to conceal from the trustee the existence of said contract with said Goswick, whereby said bankrupt had already received the sum of \$3,500, and under which contract there was still due to said bankrupt the sum of \$16,500 (of which sum of \$16,500 the amount of \$8,000 was paid to said bankrupt within 10 days after said questions were so answered by said bankrupt, to wit, on or about the 8th day of June, 1928) and the receipt of which sum of \$8,000 by said bankrupt was concealed by him from the trustee until the 24th day of November, 1928, [74] and which said sum of \$8,000 has never been delivered to said trustee; all of which sums so becoming due under said contract being the property of said bankrupt estate, and that said false answers were given by said bankrupt for the purpose of deceiving said trustee and concealing from him the existence of said payments theretofore made by said Goswick on said contract and the amounts still due to said bankrupt under said contract.

ELEVENTH: For the reason that the bankrupt herein committed an offense punishable by imprisonment under the Bankruptcy Act, in that he has knowingly and fraudulently made a false oath and rendered a false account in and in relation to his proceedings in bankruptcy as follows:

(a) In that on, to wit, the 17th day of April, 1928, the said George W. Shute, the bankrupt named herein, subscribed and swore to an oath to Schedule A (being the schedule of his assets filed herein) before one R. E. Conger, a notary public

in and for the County of Maricopa, State of Arizona, in the Federal District of Arizona, in which he did declare the said schedule to be a statement of all his debts in accordance with the acts of Congress relating to bankruptcy, which schedule was on the 17th day of April, 1928, filed with the United State District Court for the District of Arizona in the Clerk's office thereof, as a part of this proceeding, said schedule showing only one creditor of the said bankrupt, namely, J. J. Mackay, and that said oath to said schedule was false as to a material fact in this, that in truth and in fact, there was another creditor of the said bankrupt, namely, The First National Bank of Arizona, a banking corporation [75] which held a promissory note of said bankrupt for the sum of Seven Hundred Fifty (750.00) Dollars, dated April 7, 1928, which promissory note was at that time unpaid, a liability of said estate and secured by a chattel mortgage upon one Hudson car belonging to the bankrupt, described as 1928 Hudson Sedan, Motor #495579, Serial #799342, executed by said bankrupt on the 7th day of April, 1928, said car not being scheduled as an asset of said estate, and the amount of \$650.00 of the consideration of said note not having been satisfactorily accounted for in these proceedings.

(b) In that on, to wit, the 17th day of April, 1928, the said bankrupt, George W. Shute, did knowingly and fraudulently before one R. E. Conger, a notary public in and for the County of Maricopa, State of Arizona, subscribe to and make a false oath to Schedule B of the schedule of his

liability in this estate, in that after being duly sworn, he did declare the said schedule to be a statement of all his assets, both real and personal, in accordance with the Acts of Congress relating to bankruptcy, in that in said Schedule B, he listed as his entire assets, real estate of the value of Two Hundred Fifty (\$250.00) Dollars; books, prints, and pictures of the value of Twenty-five (\$25.00) Dollars; deposits of money in the bank and elsewhere, of Fifteen and 67/100 (\$15.67) Dollars; and certain mining stocks listed as of no market value; making a total of nonexempt assets listed of Two Hundred Ninety and 67/100 (\$290.67) Dollars; and exempt property as follows: household goods of the value of Two Hundred Fifty (\$250.00) Dollars, and other personal property, consisting of a law library and office fixtures of the value of Seven Hundred Fifty (\$750.00) Dollars, when in truth and in fact his [76] said assets at that time were in excess of the sum of, to wit, Thirty Thousand (\$30,000.00) Dollars; the omissions of assets from said schedule being more particularly described as follows, to wit:

(1) One Hudson car described as 1928 Hudson Sedan, Motor #495579, Serial #799342, of the value of \$900.00.

(2) One life insurance policy upon the life of the bankrupt as follows: Policy #3310053, issued by the Mutual Life Insurance Company of New York, dated May 25, 1924, of the cash surrender value of \$746.85.

(3) Savings account in the First National Bank of Arizona at Phoenix, Arizona, being Account #19061, in the name of Jessie M. Shute, wife of said bankrupt, against which account said bankrupt retained the right to check, the said savings account containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of \$1,162.30.

(4) One phonograph of the value of \$200.00.

(5) The sum of \$250.00, deposited by the bankrupt with one Arthur LaPrade during the month of December, 1927.

(6) One Essex car described as Essex Coach, Serial #640003, of the value of \$600.00.

(7) The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, \$5,000.00.

(8) One certain contract entered into by and between one Wesley Goswick and the bankrupt, on or [77] about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of \$20,000 out of the proceeds of the sale by the said Wesley Goswick of a cinnabar mining property consisting of twenty unpatented mining claims located upon or near what is known as Slate Creek in the County of Gila, State of Arizona, the title to said property being in the name of said Goswick, and the sale thereof be-

ing made to one L. E. Foster, for the sum of \$200,000, payable as follows: \$5,000 on the 8th day of December, 1926; \$10,000 on or before six months from the 8th day of December, 1926; \$20,000 on or before one year from the 8th day of December, 1926; \$82,500 on or before 18 months from the 8th day of December, 1926, and \$82,500 on or before two years from the 8th day of December, 1926, less certain sums to be paid monthly by the purchaser of said property and less certain royalties which were to be paid by the purchaser as they were received on the smelting returns of the ore taken from said mine, a copy of which said contract between said Goswick and said Foster being held in escrow in the Old Dominion Bank of Globe, Arizona; the said mining property having been owned jointly by the said Wesley Goswick and one William A. Packard, with the exception of such interest as the said bankrupt had therein, which interest of the bankrupt under said contract amounted to the said sum of \$20,000, and was payable in an amount of 10% of the payments made by the purchaser at the time they were made by the purchaser; the amount of \$16,500 being [78] due on said contract to said bankrupt on the date of the filing of the petition of bankruptcy herein.

(9) The undivided partnership interest in the assets of the firm of Armstrong, Lewis and Kramer, of which firm the said bankrupt was a member; the interest of the said bankrupt in the assets of said

firm being of the estimated value of Five Thousand (\$5,000.00) Dollars.

That said oath to said Schedule B was false as to a material fact in this, that said assets of said bankrupt so omitted from his schedule were assets belonging to said bankrupt estate, the existence of which said bankrupt was by said omission concealing from the officers of the bankruptcy court in charge of said proceedings.

(c) In that on, to wit, the 7th day of May, 1928, the said bankrupt, George W. Shute, did knowingly and fraudulently before one R. E. Conger, a notary public in and for the County of Maricopa, State of Arizona, subscribe to and make a false oath to Schedule B of the amended schedule of his liabilities in this estate, which said amended schedule was on the 8th day of May, 1928, filed with the United States District Court for the District of Arizona, in the Clerk's office thereof, as a part of this proceedings; in that after being duly sworn, he did declare the said amended schedule to be a statement of all his assets, both real and personal, in accordance with the Acts of Congress relating to bankruptcy; and that in said Schedule B of said amended schedule he listed as his entire assets real estate of the value of Two Hundred Fifty (\$250.00) Dollars; books, prints, [79] and pictures of the value of Twenty-five (\$25.00) Dollars; deposits of money in banks and elsewhere, Fifteen and 67/100 (\$15.67) Dollars; certain mining stocks listed as of no market value, and a 25% interest in the net earnings of Armstrong, Lewis and Kramer, as

shown on the books of the firm from the 1st day of April, 1927, the value of said interest not being stated; and a 20% interest in the office equipment of Armstrong, Lewis and Kramer of the value of Seven Hundred Sixty-nine and 15/100 (\$769.15) Dollars; making a total value of nonexempt assets listed of One Thousand Fifty-nine and 82/100 (\$1,059.82) Dollars, exclusive of said partnership interest, and exempt property as follows: Household goods of the value of Two Hundred Fifty (\$250.00) Dollars; and other personal property consisting of a law library and office fixtures of the value of Seven Hundred Fifty (\$750.00) Dollars; when in truth and in fact said assets at that time were in excess of the sum of Thirty Thousand (\$30,000.00) Dollars; the omissions of assets from said schedule being more particularly described as follows, to wit:

(1) One Hudson car described as 1928 Hudson Sedan, Motor #495579, Serial #799342, of the value of \$900.00.

(2) One life insurance policy upon the life of the bankrupt as follows: Policy #3310053, issued by the Mutual Life Insurance Company of New York, dated May 25, 1924, of the cash surrender value of \$746.85.

(3) Savings account in the First National Bank of Arizona at Phoenix, Arizona, being Account #19061, in the name of Jessie M. Shute, wife of said bankrupt, against which account said bankrupt retained the [80] right to check, said savings ac-

count containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of \$1162.30.

(4) One phonograph of the value of \$200.00.

(5) The sum of \$250.00, deposited by the bankrupt with one Arthur LaPrade during the month of December, 1927.

(6) One Essex car described as Essex Coach, Serial #640003, of the value of \$600.00.

(7) The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite, and being of the value of, to wit, \$5,000.00.

(8) One certain contract entered into by and between one Wesley Goswick and the bankrupt, on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of \$20,000 out of the proceeds of the sale by the said Wesley Goswick of a cinnabar mining property consisting of twenty unpatented mining claims located upon or near what is known as Slate Creek in the County of Gila, State of Arizona, the title to said property being in the name of said Goswick, and the sale thereof being made to one L. E. Foster, for the sum of \$200,000, payable as follows: \$5,000 on the 8th day of December, 1926; \$10,000 on or before six months from the 8th day of December, 1926; \$20,000 on or before one year from the 8th day of December, 1926; \$82,500 on or before 18 months from the 8th day of December, 1926, and \$82,500

on or before two [81] years from the 8th day of December, 1926, less certain sums to be paid monthly by the purchasers of said property and less certain royalties which were to be paid by the purchaser as they were received on the smelting returns of the ore taken from said mine, a copy of which said contract between said Goswick and said Foster being held in escrow in the Old Dominion Bank of Globe, Arizona; the said mining property having been owned jointly by the said Wesley Goswick and one William A. Packard, with the exception of such interest as the said bankrupt had therein, which interest of the bankrupt under said contract amounted to the said sum of \$20,000, and was payable in an amount of 10% of the payments made by the purchaser at the time they were made by the purchaser; the amount of \$16,500 being due on said contract to said bankrupt on the date of the filing of the petition in bankruptcy herein.

That said oath to said Amended Schedule B was false as to a material fact in this, that said assets of said bankrupt so omitted from his said schedule were assets belonging to said bankrupt estate, the existence of which said bankrupt was by said omission concealing from the officers of the bankruptcy court in charge of said proceedings.

TWELFTH: For the reason that the bankrupt herein has committed an offense punishable by imprisonment under the Bankruptcy Act, in that he has knowingly and fraudulently, after the filing of the petition in bankruptcy herein withheld from the trustee in the bankruptcy estate documents and

papers affecting and relating [82] to the property and affairs of the bankrupt, to the possession of which the trustee is entitled, and the possession of which is necessary to the trustee for the purpose of collecting in the assets of the bankrupt estate, said documents and papers consisting of:

(a) One lease in which the bankrupt is the lessee of a residence and lot located at 66 West Lynwood Street, in the City of Phoenix, County of Maricopa, State and District of Arizona, the said lease having had paid thereon by said bankrupt prior to the filing of the petition in bankruptcy herein the sum of One Hundred Fifty (\$150.00) Dollars for unexpired rent thereon (with the exception of two days rent at the rate of Seventy-five (\$75.00) Dollars per month), the same being an asset of said estate, and the title to said lease having passed to the trustee by operation of law as of the date of the filing of the bankrupt's petition in bankruptcy herein.

(b) One promissory note signed by Joseph E. Noble, dated the 18th day of October, 1927, for the principal sum of Twelve Hundred (\$1,200.00) Dollars, payable to the First National Bank of Arizona, signed by said Joseph E. Noble as principal, and by G. W. Shute, the bankrupt, as surety, which said promissory note was on or about the 27th day of February, 1928, paid by said bankrupt, and which promissory note is an asset of the bankrupt estate, title to which passed to the trustee herein as of the date of the filing of the petition in bankruptcy herein by the said bankrupt.

THIRTEENTH: For the reason that he has failed to keep books of account or records from which his financial condition and business [83] transactions might be ascertained, and has concealed records from which his business transactions might be ascertained.

FOURTEENTH: For the reason that he has at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy transferred real property owned by himself from himself to his wife, with intent to hinder, delay and defraud his creditors; such property being situated in the County of Gila, State of Arizona, and more particularly described as follows, to wit: Lots, 1, 2, 3, 4, and South Half of Lot 5, Block 45, East Globe Townsite; that said transfer was accomplished in the following manner, to wit: That the said bankrupt was the owner of the above-described property as the community property of himself and wife ever since the 20th day of December, 1920, when the same was acquired by him by the payment thereof of the consideration for the purchase thereof from the community funds of himself and the said Jessie M. Shute, acquired by said bankrupt after his marriage to said Jessie M. Shute, and by the giving of a joint promissory note and mortgage as a part of the consideration for the said purchase to one Mary E. Holmes for the sum of Thirty-five Hundred (\$3500.00) Dollars, which promissory note and mortgage was a community liability, the title to said property having been taken in the name of the said Jessie M.

Shute, but not as the separate property of the said Jessie M. Shute, and having stood of record as the community property of the bankrupt and his wife from the time of its acquirement up to the time of the filing of the petition in bankruptcy herein. That in, to wit, the early part of the year 1928, the said bankrupt, while insolvent within the meaning and intent of the Bankruptcy Act, and not having sufficient property to pay his debts, transferred the above-described property to his said wife, Jessie M. Shute, by disclaiming any interest therein in her favor, and by relinquishing possession thereof to her; all of which was done in [84] contemplation of bankruptcy, and with the intent to hinder, delay and defraud his creditors. That subsequent to the filing of his said petition in bankruptcy, he has continued to aid his wife, the said Jessie M. Shute, in withholding possession of said premises from the trustee of said estate, and employed counsel for her to prevent the delivery of same to the trustee herein, and to prevent the payment of the rents thereof to the trustee herein; that the above-described real estate was and is of the value of, to wit, the sum of Five Thousand (\$5,000.00) Dollars, and had and has a rental value of, to wit, the sum of Fifty (\$50.00) Dollars per month, and has been actually rented at (\$50.00) Dollars per month ever since the filing of the voluntary petition in bankruptcy by the bankrupt; that subsequently to his adjudication in bankruptcy the said bankrupt caused his wife, the said Jessie M. Shute, to file a declaration of homestead upon said premises, and

himself had the same recorded in the office of the County Recorder of Gila County on the 18th day of June, 1928, thereby clouding the title of your trustee and carrying out the disclaimer and relinquishment of his right and title to the real estate and improvements as hereinbefore set forth, in favor of his wife, the said Jessie M. Shute, all of which was done with the intent to hinder, delay and defraud his creditors.

FIFTEENTH: For the reason that he has at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy transferred personal property owned by himself to one A. E. England, with intent to hinder, delay, and defraud his creditors; that said property consisted of one automobile of the value of, to wit, Nine Hundred (\$900.00) Dollars, and more particularly described as follows, to wit: 1928 Hudson Sedan, Motor #495579, Serial #799342; that said transfer [85] was accomplished by delivering the said automobile to the said A. E. England to hold and keep as his own, and to store the same in the building occupied by the A. E. England Motors in the City of Phoenix, County of Maricopa, State of Arizona; that said transfer was made in the early part of the year, 1928, and was made in contemplation of bankruptcy; that the said automobile remained in the custody of the said A. E. England up to and subsequent to the adjudication in bankruptcy of the bankrupt in the above-entitled matter until a time some weeks subsequent to said adjudication when the same was

purchased from your trustee by the said bankrupt for the sum of Nine Hundred (\$900.00) Dollars.

SIXTEENTH: For the reason that he has at a time subsequent to the first day of the twelve months immediately preceding the filing of his petition in bankruptcy concealed and permitted to be concealed personal property belonging to said bankrupt and bankrupt estate, more particularly described as follows: A savings account numbered 19061, in the First National Bank of Arizona, standing in the name of Jessie M. Shute, but being the community property of said bankrupt, and said Jessie M. Shute, and consisting of funds acquired after marriage by the said bankrupt, of the sum of Eleven Hundred Sixty-two and $30/100$ (\$1162.30) Dollars; \$1,000 or more of which sum was by the said bankrupt withdrawn or permitted to be withdrawn from the said account after the same had been the subject of testimony and examination at a meeting of creditors of the said bankrupt held on the 29th day of May, 1928, for the purpose of placing the same beyond the reach of the trustee and of the Court of Bankruptcy, and which sum has been secreted and concealed from the trustee and the officers of the Court of Bankruptcy, and thereby depriving the estate of said bankrupt of said sum of One Thousand (\$1,000.00) Dollars, with intent to hinder, delay and defraud the creditors of said bankrupt. [86]

SEVENTEENTH: For the reason that he has at a time subsequent to the first day of the twelve months immediately preceding the filing of his peti-

tion in bankruptcy concealed and permitted to be concealed personal property belonging to said bankrupt and bankrupt estate, more particularly described as follows: By receiving and secreting in, to wit, the month of June, 1928, the sum of, to wit, Eight Thousand (\$8,000.00) Dollars, paid to said bankrupt by one Wesley Goswick, upon a contract entered into by said Goswick and said bankrupt prior to the filing of the petition in bankruptcy by the bankrupt herein, which said contract passed by operation of law to your trustee in bankruptcy in these proceedings at the time they were instituted, and which sum of, to wit, Eight Thousand (\$8,000.00) Dollars was the property of your trustee in bankruptcy and collected by the said bankrupt without the knowledge or consent of the trustee and he has ever since said time concealed the same from the trustee and the officers of the Bankruptcy Court with intent to hinder, delay and defraud the creditors of said bankrupt.

EIGHTEENTH: For the reason that he has in the course of the proceedings in bankruptcy refused to obey a lawful order of the Court, to wit, the order of said bankrupt court made on the 1st day of May, 1928, requiring said bankrupt to file new schedules or to amend said schedules theretofore filed by him to conform to the facts and the provisions of the Bankruptcy Act; that said bankrupt subsequent to said order filed what was termed an amended schedule, but that said amended schedule did not comply with said order of the Court dated May 1, 1928, as aforesaid, and did not con-

form to the facts and the provisions of the Bankruptcy Act, in that said bankrupt knowingly and fraudulently omitted from said amended schedule the following assets belonging to said [87] bankrupt estate, to wit:

(1) One Hudson car described as 1928 Hudson Sedan, Motor #495579, Serial #799342, of the value of \$900.00.

(2) One life insurance policy upon the life of the bankrupt as follows. Policy #3310053, issued by the Mutual Life Insurance Company of New York, dated May 25th, 1924, of the cash surrender value of \$746.85.

(3) Savings account in the First National Bank of Arizona at Phoenix, Arizona, being account #19061, in the name of Jessie M. Shute, wife of said bankrupt, against which account said bankrupt retained the right to check, said savings account containing on the date petition in bankruptcy was filed, to wit, the 17th day of April, 1928, the sum of \$1162.30.

(4) One phonograph of the value of \$200.00.

(5) The sum of \$250.00, deposited by the bankrupt with one Arthur LaPrade during the month of December, 1927.

(6) One Essex car described as Essex Coach, Serial #640003, of the value of \$600.00.

(7) The following described property situated in the City of Globe, County of Gila, State of Arizona, more particularly described as Lots 1, 2, 3, 4, and South Half of Lot 5, Block 45,

East Globe Townsite, and being of the value of, to wit, \$5,000.00.

(8) One certain contract entered into by and between one Wesley Goswick and the bankrupt, on or about the 8th day of December, 1926, under and by virtue of the terms of which the said bankrupt was to receive the sum of \$20,000 out of the proceeds of the sale by the said Wesley Goswick of a cinnabar mining property consisting of twenty unpatented mining claims located upon or near what is known as Slate Creek in the County of Gila, State [88] of Arizona, the title to said property being in the name of said Goswick, and the sale thereof being made to one L. E. Foster, for the sum of \$200,000, payable as follows: \$5,000 on the 8th day of December, 1926; \$10,000 on or before six months from the 8th day of December, 1926; \$20,000 on or before one year from the 8th day of December, 1926; \$82,500 on or before 18 months from the 8th day of December, 1926, and \$82,500 on or before two years from the 8th day of December, 1926, less certain sums to be paid monthly by the purchaser of said property and less certain royalties which were to be paid by the purchaser as they were received on the smelting returns of the ore taken from said mine, a copy of which said contract between said Goswick and said Foster being held in escrow in the Old Dominion Bank of Globe, Arizona; the said mining property having been owned jointly by the said Wesley

Goswick and one William A. Packard, with the exception of such interest as the said bankrupt had therein, which interest of the bankrupt under said contract amounted to the said sum of \$20,000, and was payable in an amount of 10% of the payments made by the purchaser at the time they were made by the purchaser; the amount of \$16,500 being due on said contract to said bankrupt on the date of the filing of the petition in bankruptcy herein.

NINETEENTH: For the reason that he has failed to explain satisfactorily losses of assets and deficiency of assets to meet his liability in this, that for the period commencing January 1st, 1927, and up to and including the date of the filing of his petition in bankruptcy herein by said bankrupt, to wit, the 17th day of April, 1928, said bankrupt had cash assets in the form [89] of income and other amounts received by him during said period of an amount of not less than \$21,695.20; and that after deducting from said amount all expenditures and disbursements thereof testified to by said bankrupt under examination before the referee in bankruptcy at the first meeting of creditors, or revealed from such statements and data as have been produced by said bankrupt in said bankruptcy proceedings, there still remains an amount of not less than Seven Thousand (\$7,000.00) Dollars received by said bankrupt during said period of time, which is totally unaccounted for and the disappearance of which said bankrupt has failed to explain satisfactorily or at all; and said bankrupt has testified under oath at

his examination before the referee in bankruptcy, at the first meeting of creditors in said bankruptcy proceedings, that he cannot explain such deficiency.

WHEREFORE, objection is made to the granting of such application for a discharge.

J. J. MACKAY,

Objecting Creditor.

ALICE M. BIRDSALL,

Attorney for Creditor. [90]

United States of America,

District of Arizona,—ss.

J. J. Mackay, being the creditor above named, does hereby make solemn oath that the statements contained in the foregoing specifications of objection to discharge of bankrupt, subscribed by him, are true.

J. J. MACKAY.

Subscribed and sworn to before me this 15th day of December, 1928.

[Notarial Seal]

BESS M. WHITE,

Notary Public.

My commission expires June 18, 1931.

[Endorsed]: Filed Dec. 19, 1928. [91]

In the District Court of the United States, in and
for the District of Arizona.

March, 1928, Term—Friday, July 20, 1928—at
Prescott.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

[Title of Cause.]

MINUTES OF COURT—JULY 20, 1928—OR-
DER EXTENDING TIME TO AND IN-
CLUDING OCTOBER 15, 1928, TO FILE
SPECIFICATIONS IN OPPOSITION TO
DISCHARGE OF BANKRUPT.

On motion of Thomas W. Nealon, trustee, and
Alice M. Birdsall, appearing for creditor, J. J.
Mackay,—

IT IS ORDERED BY THE COURT that the
time of the trustee and of the creditor J. J. Mac-
kay be, and is hereby, extended to October 15, 1928,
in which to file their specifications in opposition to
the discharge of the bankrupt. [92]

In the District Court of the United States, in and
for the District of Arizona.

April, 1928, Term—Tuesday, September 25, 1928—
at Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

[Title of Cause.]

MINUTES OF COURT—SEPTEMBER 25, 1928
—ORDER EXTENDING TIME TO AND
INCLUDING NOVEMBER 1, 1928, TO FILE
SPECIFICATIONS IN OPPOSITION TO
DISCHARGE OF BANKRUPT.

IT IS ORDERED BY THE COURT that time
of the trustee and creditors in the above-entitled
cause to file specifications in opposition to discharge
is extended to November 1st, 1928. [93]

In the District Court of the United States, in and
for the District of Arizona.

October, 1928, Term—Saturday, October 27, 1928—
at Phoenix.

Honorable F. C. JACOBS, United States District
Judge, in Chambers.

[Title of Cause.]

MINUTES OF COURT—OCTOBER 27, 1928—
ORDER EXTENDING TIME TO AND IN-
CLUDING DECEMBER 15, 1928, TO FILE
SPECIFICATIONS AND OBJECTIONS TO
DISCHARGE OF BANKRUPT.

On motion of Alice Birdsall, Esq.,—

IT IS ORDERED BY THE COURT that time
of the trustee and creditors to file specifications and
objections to discharge of the bankrupt is extended
to December 15th, 1928. [94]

In the District Court of the United States in and
for the District of Arizona.

October, 1928, Term—Friday, December 14, 1928—
at Phoenix.

Honorable F. C. JACOBS, United States District
Judge, in Chambers.

[Title of Cause.]

MINUTES OF COURT—DECEMBER 14, 1928—
ORDER EXTENDING TIME TO FILE
SPECIFICATIONS AND OBJECTIONS TO
DISCHARGE OF BANKRUPT.

IT IS ORDERED BY THE COURT that the
time for trustee and creditors to file specifications
and objections to discharge of bankrupt be extended

ten (10) days from and after December 14th, 1928.
[95]

In the District Court of the United States, in and
for the District of Arizona.

October, 1928, Term—Wednesday, January 2,
1929—at Phoenix.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

[Title of Cause.]

MINUTES OF COURT—JANUARY 2, 1929—
ANNOUNCEMENT OF DISQUALIFICA-
TION OF HONORABLE F. C. JACOBS,
JUDGE.

Honorable F. C. Jacobs, Judge, announces his dis-
qualification to hear this matter, and called to his
assistance the Honorable William H. Sawtelle,
Judge of the Tucson Division of this court. [96]

Wednesday, January 2, 1929.

Honorable WILLIAM H. SAWTELLE, United
States District Judge, Presiding.

MINUTES OF COURT—JANUARY 2, 1929—
HEARING.

Trustee's and creditors' specifications of objec-
tion to discharge of bankrupt, come on regularly for
hearing this date.

The bankrupt, George W. Shute, is present in person with his counsel, Orme Lewis, Esq., and James R. Moore, Esq. Thomas W. Nealon, trustee, is present. Alice M. Birdsall appears as counsel for the creditor, J. J. Mackay.

It is stipulated by and between the respective counsel and the trustee herein, that the depositions heretofore taken and the testimony taken by the stenographer before the referee may be used. It is further stipulated that bankrupt's income tax reports for 1925 and 1926 will be furnished.

And, thereupon, the further trial of this matter is ORDERED continued to January 3d, 1929, at ten o'clock A. M.

Thursday, January 3, 1929.

MINUTES OF COURT—JANUARY 3, 1929—
ORDER CONTINUING HEARING TO
JANUARY 9, 1929.

The bankrupt, George W. Shute, is present in person, with his counsel, Orme Lewis, Esq., and James R. Moore, Esq. Thomas W. Nealon, trustee, is present. Alice M. Birdsall appears as counsel for the creditor, J. J. Mackay.

Further hearing is now had by the Court on objections to the discharge of the bankrupt, George W. Shute, of the trustee, Thomas W. Nealon, and the creditor, J. J. Mackay.

The following stipulations are now made and entered into by respective counsel:

That all depositions and testimony heretofore introduced in evidence before the referee may be admitted in so far as pertinent.

That the testimony of the witness, Mrs. Mary Holmes, taken before the referee, may be received in evidence as the original.

That the copy of the income tax returns for the year 1926 of both the bankrupt and his wife, Mrs. George W. Shute, may be received as originals.

That the copy of income tax returns of the bankrupt for the year 1925 may be received as the original. [97]

That the Court may have the transcript of testimony taken before the referee for review before hearing.

And, thereupon, the further hearing of this matter is ORDERED continued until Wednesday, January 9th, 1929.

Friday, January 4, 1929.

Honorable F. C. JACOBS, United States District
Judge, Presiding.

MINUTES OF COURT—JANUARY 4, 1929—
ORDER RE TRANSMISSION OF TRAN-
SCRIPT OF TESTIMONY.

IT IS ORDERED BY THE COURT that R. W. Smith, referee in bankruptcy, deliver to the Clerk of this court, for transmission to the Honorable William H. Sawtelle, Tucson, Arizona, the tran-

script of the testimony taken before the said referee, together with the exhibits attached thereto or in the files of the said referee, in connection with said transcript.

Wednesday, January 9, 1929.

Honorable WILLIAM H. SAWTELLE, United States District Judge, Presiding.

MINUTES OF COURT—JANUARY 9, 1929—
HEARING (RESUMED).

The objections of the trustee, and the creditor, J. J. Mackay, to discharge of bankrupt herein, come on regularly for hearing this date. The following are present:

George W. Shute, with his counsel, Orme Lewis, Esq., and James R. Moore, Esq.

Thomas W. Nealon, trustee.

J. J. Mackay, creditor, with his counsel, Alice M. Birdsall.

On motion of Alice M. Birdsall, counsel for the creditor, J. J. Mackay,—

IT IS ORDERED that John L. Dyer, Esq., be associated with counsel for the creditor, J. J. Mackay.

D. A. Little is now duly sworn as court reporter to report the evidence in this case for the trustee and creditor, J. J. Mackay.

The following exhibits are admitted in evidence and filed on behalf of the trustee and objecting creditor:

Exhibit No. 1. Creditor's claim of J. J. Mackay.

Exhibit No. 2. Schedules filed by bankrupt.

Exhibit No. 3. Amended schedules filed by bankrupt. [98]

The witness, Otis E. Rogers, is sworn and examined on behalf of the trustee and objecting creditor.

The following exhibits are admitted in evidence and filed on behalf of the trustee and objecting creditor:

Exhibit No. 4. Conditional sales contract.

Exhibit No. 5. Chattel mortgage.

Exhibit No. 6. Check No. 528, signed by G. W. Shute.

The witness, E. A. Wedophol, is sworn and examined on behalf of the trustee and objecting creditor.

Exhibit No. 7. Letter on letter-head of Dr. Charles S. Vivian, is admitted in evidence and filed on behalf of the trustee and objecting creditor.

The witness, Sylvan C. Gans, is sworn and examined on behalf of the trustee and objecting creditor.

Exhibit No. 8. Five checks, dated June 24th, 1927, August 22d, 1927, September 2d, 1927, November 17th, 1927, and January 4th, 1928, respectively, and all signed by G. W. Shute, is admitted in evidence and filed on behalf of the trustee and objecting creditor.

The witness, George F. Wilson, is sworn and examined on behalf of the trustee and objecting creditor.

Exhibit No. 9. Letter signed Armstrong, Lewis & Cramer, by G. W. Shute, dated November 26th, 1928, addressed to Old Dominion Bank, Globe, Arizona, to which is attached a carbon copy of modification of contract.

Stipulation is entered into by and between respective counsel herein whereby the above Exhibit No. 9 may be returned to the Old Dominion Bank, Globe, Arizona. Whereupon,

IT IS ORDERED that a certified copy of said letter be substituted in this case. [99]

The following exhibits are admitted in evidence and filed on behalf of the trustee and objecting creditor:

Exhibit No. 10. Warranty deed, Albert G. Sanders and Mary E. Sanders, his wife, to Jessie M. Shute, dated December 20th, 1920.

Exhibit No. 11. Realty mortgage, G. W. Shute and Jessie M. Shute, his wife, to Mary E. Holmes, guardian, dated January 17th, 1921.

Exhibit No. 12. Declaration of Homestead by Jessie M. Shute.

Exhibit No. 13. Certified copy of order of adjudication and reference filed and recorded in the office of the county recorder, Gila County, Arizona.

The witness, W. W. McBride, is sworn and examined on behalf of the trustee and objecting creditor.

And thereupon, IT IS ORDERED that court do stand at recess until two o'clock P. M. this date.

Subsequently, the parties hereto and their respective counsel being present pursuant to recess, further proceedings are had as follows:

The witness, W. W. McBride, heretofore sworn and examined on behalf of the trustee and objecting creditor, now resumes the witness-stand.

The following exhibits are admitted in evidence and filed on behalf of the trustee and objecting creditor:

Exhibit No. 15. Receipt for insurance policy.

Exhibit No. 16. Copy of memorandum made by George W. Shute.

Exhibit No. 17. Copy of income tax return for 1925.

Exhibit No. 18. Copy of income tax return for 1926.

Exhibit No. 19. Check No. 548, dated December third, 1927.

Exhibit No. 20. Check No. 545, dated December 19th, 1927.

Exhibit No. 21. Copy of articles of copartnership.

Exhibit No. 22. Modification of partnership agreement, dated December 27, 1923.

Exhibit No. 23. Modification of partnership agreement, dated December 17, 1924.

Exhibit No. 24. Dividend report of Armstrong, Lewis & Cramer, to G. W. Shute. [100]

Exhibit No. 25. Copy of note for \$1200.00 dated October 18, 1927, signed by Joseph E. Noble.

Exhibit No. 26. Copy of note for \$1500.00, dated April 14, 1928, signed by Leslie H. Creed and Virginia S. Creed.

Whereupon, the trustee and objecting creditor rest.

BANKRUPT'S CASE.

The following witnesses are sworn and examined on behalf of the bankrupt:

Wesley Goswick.

Louis E. Foster.

Whereupon the further hearing of this case is continued to January 10th, 1929, at nine-thirty o'clock A. M., to which time the parties and counsel are excused.

Thursday, January 10, 1929.

MINUTES OF COURT—JANUARY 10, 1929— HEARING (RESUMED).

The parties, and their respective counsel, are present pursuant to recess, and further proceedings are had as follows:

BANKRUPT'S CASE—CONTINUED.

The following witnesses are sworn and examined on behalf of the bankrupt:

Gladys Parry,

Joseph E. Noble,

Arthur T. LaPrade,

Orme Lewis.

Exhibit "A" is admitted in evidence and filed on

behalf of the bankrupt, statement of receipts and disbursements, prepared by Orme Lewis.

Thomas W. Nealon, trustee herein, is sworn and examined on behalf of the bankrupt.

And, thereupon, IT IS ORDERED that court do stand at recess until two o'clock P. M. this date.
[101]

Subsequently, the parties hereto and their respective counsel being present pursuant to recess, further proceedings are had as follows:

The witness, Thomas W. Nealon, heretofore sworn and examined on behalf of the bankrupt, now resumes the witness-stand.

The bankrupt, George W. Shute, is sworn and examined on his own behalf.

And, thereupon, the further hearing of this matter is ORDERED continued to January 11th, 1929, at nine-thirty o'clock A. M., to which time the parties and counsel are excused.

Friday, January 11, 1929.

MINUTES OF COURT—JANUARY 11, 1929—
HEARING (RESUMED).

All the parties and their respective counsel are present pursuant to recess, and further proceedings are had as follows:

BANKRUPT'S CASE—CONTINUED.

The examination of the bankrupt, George W. Shute, heretofore sworn and examined, is resumed.

And, thereupon, IT IS ORDERED that court do stand at recess until one o'clock P. M. this date.

Subsequently, the parties hereto and their respective counsel being present pursuant to recess, further proceedings are had as follows:

The examination of the bankrupt, George W. Shute, heretofore sworn and examined, is resumed.

The following exhibits are admitted in evidence and filed on behalf of the trustee and objecting creditor:

Exhibit No. 27. Quitclaim deed, from Mrs. M. B. Cullumber to G. W. Shute, dated October 18, 1909.

Exhibit No. 28. Warranty deed, from Mrs. Mary B. Cullumber to G. W. Shute, dated October 18, 1909.

Exhibit No. 29. Complaint and answer in case No. 5431, in the District Court of the Fourth Judicial District of the Territory of Arizona, in and for the county of Yavapai, William Stephens, as the Administrator of the Estate of Mary B. Cullumber, Deceased, vs. G. W. Shute. [102]

Exhibit No. 30. Warranty deed, from G. W. Shute, Ada Ray Gillespie, Jessie M. Shute and Arthur Small, to John H. Robinson, dated October 4, 1916.

Exhibit No. 31. Box containing three packages check stubs; six packages checks; six ledger sheets; twenty-seven bank statements.

And the bankrupt rests.

The witness, W. W. McBride, heretofore sworn

and examined is now called in rebuttal on behalf of the trustee and objecting creditor.

And, thereupon, the further hearing of this matter is ORDERED continued to January 12th, 1929, at eight-thirty o'clock A. M., to which time the parties and counsel are excused. [103]

In the District Court of the United States, in and
for the District of Arizona.

October, 1928, Term—Saturday, January 12, 1929
—at Phoenix.

Honorable WILLIAM H. SAWTELLE, United
States District Judge, Presiding.

[Title of Cause.]

MINUTES OF COURT—JANUARY 12, 1929—
HEARING (RESUMED).

All the parties and their respective counsel are present pursuant to recess, and further proceedings are had as follows:

All the evidence being in, the case is argued by respective counsel to the Court.

And, thereupon, the case is submitted to the Court for decision. Whereupon, the Court finds that none of the specifications has been sustained by the evidence, and it is now, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that the objections to the discharge of the bankrupt be and they are hereby overruled,

and that the petition for discharge of the bankrupt, be, and it is hereby granted, to which finding and ruling of the Court, the trustee and creditor, J. J. MacKay, and each of them, except, and now give notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit. Whereupon, the trustee and the creditor, J. J. MacKay, and each of them, now request that they be allowed sixth (60) days in which to prepare and file their bill of exceptions. Whereupon,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the trustee, Thomas W. Nealon, and the creditor, J. J. MacKay, and each of them, be and they are hereby granted the period of sixty (60) days in which to prepare and file their bill of exceptions herein. [104]

December, 1928, Term—Wednesday, January 16,
1929—at Globe.

MINUTES OF COURT—JANUARY 16, 1929—
ORDER FIXING AMOUNT OF BOND
FOR COSTS.

IT IS ORDERED BY THE COURT that the bond for costs on appeal in this matter, be, and it is hereby fixed in the sum of Two Hundred Fifty Dollars (\$250.00), same to be approved by the Clerk of this court or his deputies at Phoenix, Arizona.

November, 1928, Term—Thursday, February 28,
1929—at Tucson.

MINUTES OF COURT—FEBRUARY 28, 1929—
ORDER GRANTING APPLICATION FOR
EXTENSION OF TIME TO PREPARE
RECORD AND STATEMENT OF EVI-
DENCE.

Thomas W. Nealon, Esq., and Alice M. Birdsall appear as counsel for the trustee and objecting creditor. Orme Lewis, Esq., appears as counsel for George W. Shute, the bankrupt.

The application for extension of time to prepare the record and statement of evidence herein, and for filing record on appeal and docketing record in the United States Circuit Court of Appeals for the Ninth Circuit, comes on regularly for hearing this date upon due notice.

The bankrupt objects to said application, and same is argued by respective counsel. Whereupon,

IT IS ORDERED BY THE COURT that said objection be overruled, and the application be, and it is hereby, granted.

Subsequently, counsel for the bankrupt withdraws his objection to said application.

April, 1929, Term—Friday, May 3, 1929—at
Phoenix.

MINUTES OF COURT—MAY 3, 1929—ORDER
EXTENDING TIME TO AND INCLUD-
ING JUNE 15, 1929, FOR REVISION AND
PROPOSAL OF STATEMENT OF EVI-
DENCE, ETC.

James R. Moore, Esq., and Orme Lewis, Esq., appear as counsel for the bankrupt. Thomas W. Nealon, Esq., and Alice M. Birdsall, appear as counsel for the trustee and objecting creditor.

The matter of settlement and approval of the statement of evidence on appeal comes on regularly for hearing this date, and is now duly argued to the Court by respective counsel. Whereupon,
[105]

IT IS ORDERED BY THE COURT that the trustee and objecting creditor be allowed until June 15th, 1929, in which to revise and file their proposed statement of evidence, and

IT IS FURTHER ORDERED that said trustee or objecting creditor may withdraw from the Clerk's files for the said purpose the proposed statement of evidence which was lodged with the Clerk of this court on April 16th, 1929.

May, 1929, Term—Tuesday, August 27, 1929—at
Tucson.

MINUTES OF COURT—AUGUST 27, 1929—
ORDER ALLOWING SUBSTITUTION OF
COPY FOR ORIGINAL BANKRUPT'S
PROPOSED AMENDMENTS TO AMEND-
MENT TO STATEMENT OF EVIDENCE,
ETC.

IT IS ORDERED that copy of bankrupt's pro-
posed amendments to amendment to statement of
evidence, submitted by attorneys for bankrupt, be,
and the same is hereby, substituted for and filed
as of date of filing of the original which has been
lost or misplaced.

Saturday, August 31, 1929.

MINUTES OF COURT—AUGUST 31, 1929—
ORDER ALLOWING WITHDRAWAL OF
EXTRA COPIES OF STATEMENT OF
EVIDENCE, ETC.

IT IS ORDERED that appellants herein be and
they are hereby allowed to withdraw extra copies
of the original statement of the evidence for the
purpose of permitting appellants to recompile same.

[Title of Court and Cause.]

DISCHARGE OF BANKRUPT.

WHEREAS, George W. Shute, of Phoenix, in said District, has been duly adjudged a bankrupt, under the Acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf.

It is, therefore, ordered by the Court that said George W. Shute be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the 17th day of April, A. D. 1928, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

WITNESS the Honorable WILLIAM H. SAWTELLE, Judge of said District Court, and the seal thereof, this 12th day of January, A. D. 1929.

[Seal of the Court]

C. R. McFALL,

Clerk.

By H. F. Schlittler,

Deputy Clerk.

Filed Jan. 12, 1929. [107]

In the United States District Court, in and for the
District of Arizona.

IN BANKRUPTCY—No. B.-486—PHOENIX.

In the Matter of GEORGE W. SHUTE, Bank-
rupt.

In the Matter of Bankrupt's Petition for Discharge.

FINDINGS, JUDGMENT AND ORDER.

In this proceeding we are not called upon to determine whether the trustee can recover or subject the property in question to the payment of debts or whether it was or was not community or separate property. Those questions can be determined in the usual and due course of judicial proceedings. The specifications filed by the creditor and by the trustee at the meeting of the creditors charge or allege that the bankrupt has knowingly and fraudulently concealed from his trustee certain property mentioned and described in the specifications and with having knowingly and fraudulently made a false oath and rendered a false account in relation to the bankruptcy proceedings; that he has failed to keep books of account or records from which his financial condition and business transactions may be ascertained and has concealed records from which his business transactions might be revealed; that he has transferred real property with intent to hinder and defraud his creditors; that he failed to obey a lawful order of the referee and include in an amended schedule certain property, including

the property in dispute. To some extent, at least, this latter objection involved the interpretation and construction of the Community Property Law of Arizona and that, of course, should [108] be determined in due course. In reviewing the evidence and I cannot go into detail in announcing my conclusion, I think it is true that Judge Shute was required to incorporate in his voluntary petition the insurance policy. I think he realizes now that that was his duty but, in view of all the facts and his offer at the first meeting of creditors and the fact that he called the attention of the trustee to the fact that he had an insurance policy, which, of course, he must have anticipated would be demanded for inspection, I do not find that that was fraudulent or that he fraudulently or corruptly failed to include it in his schedule. I do not find that there is any substantial difference between Judge Shute's testimony and that of Mr. McBride. Without reviewing the testimony in its entirety, I find that none of the specifications have been sustained; that there has been no fraud committed by the bankrupt and that he is not guilty of false swearing or of any act which would bar his discharge. I believe Judge Shute's testimony. I do not believe that he has intentionally and knowingly committed any criminal act punishable under the Bankruptcy Law or under any other law. I think the evidence shows he was a very poor business man—kept his records in a very loose manner, as many people do, unfortunately, but when you take into consideration the fact that he, in answering

the questions with reference to his income from Armstrong, Lewis & Kramer, made a statement to the best of his recollection, as I gather from his testimony, but said, "I prefer that matter be ascertained," or words to that effect, "from the records of Armstrong, Lewis & Kramer." That, to my mind, does not show any effort to conceal anything or to commit any fraud. The evidence has taken a wide range and some of it goes back and involves transactions of fifteen or twenty years ago. It is a matter of common knowledge that none of us can remember the details of transactions over such a long period of time. If there are those who are fortunate enough to remember those things in every [109] detail, they are unusually gifted in that respect and the exception to the general run of mankind. Therefore, the objections will be overruled and an order will be entered granting the discharge.

Done in open court this 26th day of April, 1929.

WM. H. SAWTELLE,
District Judge.

Filed in the office of the Clerk of the United States District Court in and for the District of Arizona, this 26th day of April, 1929.

C. R. McFALL,
Clerk. [110]

[Title of Court and Cause.]

ORDER ENLARGING APPELLANTS' TIME
FOR PREPARATION OF RECORD AND
FILING OF PRAECIPE, ALSO TIME OF
APPELLEE.

Application for enlargement of time for preparation of record including preparation and settlement of statement of evidence and filing of the praecipe by the appellants coming on duly for hearing, and good cause appearing therefor, said enlargement is hereby granted, and time for preparation and settlement of statement of evidence and for filing the record and the praecipe indicating the portions of the record to be incorporated into the transcript of the record on appeal by appellants is hereby extended for a period of 60 days from and after the date of this order, and the time of the appellees for the filing of their praecipe is also extended for a period of 30 days thereafter.

Done in open court this 28 day of February, 1929.

WM. H. SAWTELLE,
Judge United States District Court.

[Endorsed]: Filed Feb. 28, 1929. [112]

[Title of Court and Cause.]

NOTICE OF LODGING STATEMENT OF EVIDENCE AND PRAECIPE.

To George W. Shute, Bankrupt, Above Named,
and/or Messrs. James R. Moore and Orme
Lewis, His Attorneys:

You and each of you will please take notice that Thomas W. Nealon, trustee of the above-named bankrupt and estate, and J. J. Mackay, objecting creditor, in the matter of bankrupt's petition for discharge, appellants herein, have prepared the statement of the evidence taken at the hearing of the petition of the bankrupt for discharge, having prepared said statement of the evidence for the purposes of appeal, and have on this 16th day of April, 1929, lodged said statement of the evidence in the office of the Clerk of the above-entitled court for your examination. Said trustee and objecting creditor, the appellants here, have at the same time filed with the said Clerk a praecipe, of which a copy is herewith served upon you, indicating the portion of the record that they deem necessary to be incorporated into the transcript on appeal.

You are furthermore notified that said trustee and objecting creditor, the appellants herein, will on Monday, the 29th day of April, 1929, at 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled court in Tucson, Arizona, before the Honorable

William H. Sawtelle, Judge of said court, ask the Court to approve the [113] said statement of the evidence lodged with the Clerk on this date.

THOMAS W. NEALON,

Trustee and Appellant.

JOHN L. DYER,

ALICE M. BIRDSALL,

Attorneys for Objecting Creditor and Appellant.

Received copy of the above notice and of the statement of evidence this 16th day of April, 1929.

JAMES R. MOORE,

ORME LEWIS,

Attorneys for Bankrupt and Appellee.

[Endorsed]: Filed Apr. 16, 1929. [114]

[Title of Court and Cause.]

APPLICATION FOR ORDER FOR TRANSMITTAL OF ORIGINAL EXHIBIT.

Come now Thomas W. Nealon, trustee in bankruptcy in the above-entitled matter, and J. J. Mackay, objecting creditor, by his attorney, Alice M. Birdsall, and make this application to the Court for an order directing the transmittal of original Trustee's and Objecting Creditor's Exhibit No. 31, introduced in evidence at the hearing on bankrupt's petition for discharge in its original form with the transcript of record to the United States Circuit Court of Appeals for the Ninth Circuit without the necessity of making copies thereof.

This application is made for the reason that the said exhibit consisting of a large number of checks and check stubs, together with various endorsements and notations thereon, is incapable of being copied, and should be transmitted to the Appellate Court in its original form for examination by such Court.

WHEREFORE, these applicants pray that an order be made by this Honorable Court authorizing and directing the transmittal of said exhibit in its original form with the transcript of record to the United States Circuit Court of Appeals for the Ninth Circuit, without the necessity of making copies thereof. [115]

(Signed) THOMAS W. NEALON,
Trustee and Appellant.

(Signed) JOHN L. DYER,

(Signed) ALICE M. BIRDSALL,
Attorneys for Objecting Creditor and Appellant.

[Endorsed]: Filed Apr. 16, 1929. [116]

[Title of Court and Cause.]

ORDER FOR TRANSMITTAL OF ORIGINAL
EXHIBIT.

This matter coming on regularly to be heard this
— day of ———, 1929, and it appearing to the
satisfaction of the Court that Trustee's and Object-
ing Creditor's Exhibit No. 31 filed in the above-
entitled case at the trial thereof is incapable of
being copied, and that it should be transmitted to

the Appellate Court in its original form for examination by such Court,—

NOW, THEREFORE, IT IS HEREBY ORDERED, that Trustee's and Objecting Creditor's Exhibit No. 31 may be transmitted in its original form with the transcript of record to the United States Circuit Court of Appeals for the Ninth Circuit, without the necessity of making copies thereof.

Done in open court this — day of —, 1929.

_____,
United States District Judge. [117]

[Title of Court and Cause.]

STATEMENT OF THE EVIDENCE.

BE IT REMEMBERED that the hearing in the above-entitled cause came on regularly to be heard before the Honorable William H. Sawtelle, United States District Judge for the District of Arizona, in the City of Phoenix, State and District of Arizona, on the 9th day of January, 1929, at the hour of 10:00 o'clock A. M.

APPEARANCES:

Miss ALICE BIRDSALL, for Creditor.

JOHN L. DYER, Esq., for Creditor.

THOMAS W. NEALON, Trustee.

Messrs. MOORE & THOMPSON, for Bankrupt.

ORME LEWIS, Esq., for Bankrupt.

THEREUPON, the following proceedings were had:

D. A. Little was sworn as Reporter.

Miss BIRDSALL.—I move that Mr. Dyer be associated as counsel for Mr. J. J. Mackay.

The COURT.—The order associating Mr. Dyer may be entered.

Mr. NEALON.—It seems that one witness, Mr. England, has been subpoenaed but is in the hospital. We are willing to stipulate as to that that his testimony taken before the referee may be used in this case.

Mr. MOORE.—There was some additional testimony that we want from Mr. England that was not offered at that time. For the Court's information, I will state that I have only recently come into the case after objections to the discharge were filed.

The COURT.—Well, in the event he is not present, do you so stipulate?

Mr. MOORE.—Yes, I do.

The COURT.—You may proceed.

Mr. NEALON.—We think perhaps we can shorten the time a [118] great deal if counsel will stipulate as to certain matters that will be of—

The COURT.—You may make your offer and see if it is satisfactory to counsel.

Mr. NEALON.—Will you stipulate that Mrs. Conger is a notary public, with authority to administer oaths and that Judge Shute signed and swore to the different schedules filed in this matter before her?

Mr. MOORE.—Yes.

Mr. NEALON.—That this matter was referred to the referee, R. W. Smith, of this court?

Mr. MOORE.—Yes.

Mr. NEALON.—That the referee had the power to administer oaths? I don't know if that is necessary.

Mr. MOORE.—Yes, I will concede that.

Mr. NEALON.—That the deposition of Mrs. Mary E. Holmes, together with the exhibits attached, may be introduced, the exhibits to have the force as if they were original letters?

Mr. MOORE.—Yes.

Mr. NEALON.—That Mrs. Shute's testimony taken before the referee may be admitted with full force and effect as if taken in this court?

Mr. MOORE.—I stipulate that with the reservation we have the privilege of calling Mrs. Shute, if we do desire.

Mr. NEALON.—Yes. We, of course, would like that same privilege.

DEPOSITION OF MARY E. HOLMES, FOR TRUSTEE.

Testimony of MARY E. HOLMES, taken on order of Thomas W. Nealon, Trustee, before Charles C. Cabot, Esq., referee in bankruptcy for the County of Suffolk, Commonwealth of Massachusetts, sitting as Special Commissioner, at 111 Devonshire Street, Boston, [119] Massachusetts, on Wednesday, September 19, 1928, at 10 o'clock A. M.

(Deposition of Mary E. Holmes.)

APPEARANCES:

For THOMAS W. NEALON, Trustee, MARION WESTON COTTLE, Esq.

For J. J. MACKAY, a Creditor of the Estate, ALICE M. BIRDSALL, Esq.

For MARY E. HOLMES, the Witness, J. HARVEY WHITE, Esq.

Mrs. MARY E. HOLMES, being first duly sworn, testified as follows:

(Examination by Miss COTTLE.)

My name is Mary E. Holmes. I reside at 40 Algonquin Road, Chestnut Hill, Massachusetts. I am the Mary E. Holmes to whom as guardian of the person and estate of Helen H. McKillop, incompetent, George W. Shute and Jessie M. Shute, his wife, executed a mortgage dated January 17, 1921, covering lots 1, 2, 3, 4, 5 and 6, Block 45, E. Globe, Townsite, Gila County, Arizona, to secure the payment of a certain promissory note for the sum of \$3,500, executed by the same parties, dated January 17, 1921, due three years after date, bearing 10 per cent interest per annum, said mortgage being recorded in the office of the County Recorder of Gila County, Arizona, in Book 17 of Mortgages at page 69. I have not the original mortgage. It is in Globe, Arizona; always has been. It is in the possession of Graham Foster, my attorney, or the attorney for the estate. His address is simply Globe, Arizona. I have not a copy of this mort-

(Deposition of Mary E. Holmes.)

gage. My attorney, Mr. White, has not a copy. There is not any copy of this mortgage in the east, so far as I know. I never have had a copy of this mortgage. The amount of the mortgage as stated is correct. The amount of interest is correct—10 per cent per annum. I have not the original mortgage note. Graham Foster has it. The amount of this note is \$3500. I have the record payments [120] on the mortgage note in my cash account.

(Whereupon witness produces memorandum representing payments of both interest and principal from Judge Shute.)

This item at the bottom (indicating), dated September 17, 1928, the amount being \$3,000, is principal. The payments to me of interest on this mortgage were made by checks from Mr. Shute. I never received any money from the tenant of this property directly. The items of \$50.00 shown on memorandum represent the payments that he made that year, made by check from Mr. Shute. Some were his personal checks; some were checks that he made over to me, by endorsing them, sending the check to me. I do not know where those checks came from to him.

(The memorandum as evidence of payments of interest and principal in connection with the Shute mortgage was thereupon introduced in evidence and incorporated in the record. The same follows:)

Shute Note \$3500.00.

Date Jan. 17, 1921, at 10 per cent Interest.

1921.			
Apr. 25.	Sent 18th	\$87.50	
1921.			
Aug. 2.	Sent July 17	87.50	
Oct. 24.	Sent 17th	87.50	262.50
1922.			
Jan. 17.		87.50	
June 2.	Sent May 22	87.50	175.00
1923. None			
1924.			
Jan. 17.		50.00	
Feb. 4.		50.00	
Apr. 11.	Sent Apr. 4	50.00	
May 10.		50.00	200.00
[121]			
1925.			
Apr. 27.	Sent Apr. 9	50.00	
May 26.		137.00	
June 5.		50.00	
July 18.		50.00	
Aug. 28.	Sent Aug. 17	50.00	
Sept. 17.		50.00	
Oct. 21.		50.00	
Nov. 20.		50.00	
Dec. 21.		50.00	537.00
1926.			
Jan. 20.		50.00	
Feb. 18.		50.00	

(Deposition of Mary E. Holmes.)

Mar. 22.	50.00	
Apr. 19.	50.00	
May 20.	50.00	
June 17.	50.00	
July 17.	50.00	
Aug. 18.	50.00	
Oct. 20.	50.00	450.00

Payment.

Sept. 17.	3000.00	3000.00
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Q. Does this record you have handed me, Mrs. Holmes, represent all the payments that have been made to you of interest and principal on this mortgage?

A. It does. My attorney has not received any payments for me which have not yet reached me. All payments have been made directly to me. The loan covered by this mortgage was made by the attorney for the estate, Mr. Hugh Foster in Globe, from the bank in Globe, and it was done after consulting with our bondsmen Mr. Greer and Mr. Robinson. I couldn't recall the date approximately that these [122] arrangements were made. It was just before January, 1921; early in January, say, 1921, or the latter part of December. Mr. Shute wrote me about the loan, asking for it, and then later Mr. Foster telephoned—he sent—asked me about it. I have the letter that I received from Judge Shute in reference to this loan with me. It is rather a personal letter (producing letter).

Q. Mrs. Holmes, will you please examine this letter, "G. W. Shute, Superior Court Judge, Globe,

(Deposition of Mary E. Holmes.)

Arizona," dated "Dec. 8, 1920," and addressed, "My dear Mrs. Holmes," and state whether or not this is the letter that you have just referred to as having been received from Judge Shute?

A. It is.

Q. Now, Mrs. Holmes, will you read the first two pages of this letter so that the court reporter may take it down, and then we shall omit the personal part that you have referred to as having no connection with this mortgage?

A. Do you want me to begin at the beginning?

Q. Yes, if you will; we want all parts referring to the mortgage, and the personal references may be omitted that have nothing to do with this case.

(Witness reads:) "My dear Mrs. Holmes: I am glad to have your letter of December 3. I probably should have written first, but I thought that inasmuch as Mr. Foster was handling your business, it would be better to take the matter up with him direct, which I did. The property we were desirous of buying is the old Spates-Griffin property at the corner of Cottonwood and Second Streets, I believe. Anyhow, it is the property that adjoins Snell's on the east side. It consists of half the block on Cottonwood and more than one-fourth on Second Street, the block there being rectangular and not square. The improvements consist of two-story house of seven or eight rooms erected by Dr. Spates at a cost of [123] about \$6,000, but in my opinion he was stung; a large frame garage about 35 by 18 feet; a barn about 35 feet long, including saddle

(Deposition of Mary E. Holmes.)

and wash-house. The whole lot along the south and west sides is enclosed by a concrete wall and iron fence built by John Griffin. The back part of the lot they have enclosed by picket fence of one-inch boards about seven feet high. They are asking \$7,500 for it. The present owner, Mr. Sanders, paid \$7,000. I think he paid too much. But I do believe the place is well worth \$7,500. The room is attractive to me. The lot looks something like this (picture).

“I pay \$1,000 and give you a mortgage on this place and our own to secure the loan. We have been offered \$5,000 for our own place, but we think it would be better to hold it and rent it for \$60.” That has nothing to do with this, because I didn’t take that loan. “Mr. Foster told me that Mr. Greer had promised to write you and then was called East on his mother’s illness very suddenly, which accounts for the failure to write.”

I received this letter at 40 Algonquin Road, Chestnut Hill, Massachusetts. I did not receive another letter from Judge Shute in connection with this mortgage loan. At that time or subsequently I have not had any communications from him in regard to this matter other than the payment of interest and principal on the mortgage. My attorney, Mr. J. Harvey White, has just said he received letters from Judge Shute.

(Whereupon witness produced letter in reference to mortgage loan handed her by Mr. White, her attorney.)

(Deposition of Mary E. Holmes.)

Q. Mrs. Holmes, I show you a letter headed, "Armstrong, Lewis & Kramer, Lawyers, First National Bank of Arizona Bldg., Phoenix, Arizona," dated "August 29, 1928," addressed to "Messrs. Parker and White, Counselors at Law, 14 Beacon Street, Boston, Mass.," entitled "Re Estate McKillop." Will you examine this letter and state whether or not the signature thereto attached, "G. W. Shute," [124] is the signature of Judge Shute referred to in this case? A. It is.

Q. Will you examine the next to the last paragraph in this letter and read it so that it may be incorporated in the record of this deposition?

(Witness reads from letter produced.)

"Referring to the bankruptcy proceedings concerning which you ask, beg to advise that the McKillop note was never listed in the estate in view of the fact that the debt and the property belong to Mrs. Shute exclusively and is her separate estate. The adjudication thereon was had as of the 17th day of April, 1928. There is but one creditor."

Q. Is this the first notice that you had that this property was regarded as the separate property of Mrs. Shute—Mrs. Jessie M. Shute—wife of Judge George W. Shute?

A. I supposed it was her property.

Q. Have you ever received any other communication from Judge Shute stating that this property on which you hold the mortgage is regarded by him as the separate property of his wife?

(Deposition of Mary E. Holmes.)

A. That letter which you read, I suppose—I gathered from that that it was the property of his wife.

Q. What letter do you mean, Mrs. Holmes?

A. The first letter, wherein he asked for the loan.

Q. May I have that other letter, please?

A. (Handing letter to Miss Cottle.) His use of the word “we”; I supposed when I was making the loan I was making it for a homestead or a home for them.

Q. Then you didn't understand at the time that you made the loan that this was to be regarded as the separate property of his wife; you understood that this was to be what is known as community property in Arizona, as held by husband and wife?

A. No, I supposed it would be the same as I hold my home; it [125] would be Mrs. Shute's home. I have said I thought it was to be a home—their home. I supposed it would be the same as it would here, the same as I hold my home. It was my property. That was the way I took the letter when it came. As to my object in having Judge Shute sign this mortgage note if I believed the only liability was on the part of his wife, I would have to leave that question to the attorney because I was not there at the time. The note was made by Mr. Foster as attorney. I don't know anything about the actual proceedings which led to the making of this loan. These matters were attended to through my attorney in Arizona and through my bondsman, and I was in the east at that time. The letter of

(Deposition of Mary E. Holmes.)

December 8, 1920, is all the letter that I find that I personally have received from Judge Shute in reference to the mortgage loan. I mean by that that the letter of December 8, 1920, is the only letter that I find that I received from Judge Shute at the time these negotiations were being made. I have not since that date received any letter from Judge Shute in reference to this mortgage loan. Referring to a letter (exhibited to witness) headed "Armstrong, Lewis & Kramer, Lawyers, First National Bank of Arizona Bldg., Phoenix, Arizona," dated August 14, 1928, addressed to Mrs. Mary E. Holmes, 40 Algonquin Road, Chestnut Hill, Mass., and signed "G. W. Shute," I don't remember having it, and I didn't have it in my file (witness examines letter). I evidently received this letter from Judge Shute. It is his signature at the bottom of the letter. I will read the last paragraph on page 1 of this letter into the record, as follows: [126]

"The insurance on the house has been kept up and I should have sent you the policies. They have been renewed and paid from time to time, so that the full protection is there for any interest which you may have. The proceedings here can in nowise affect your interest. In fact, it has been left as it is with the express purpose of protecting me in a way on question which I knew would arise relative to the house. The property in Globe belongs exclusively to Mrs. Shute and has from the beginning, but there is always some question in matters of this kind, and it was with this in view that I did

(Deposition of Mary E. Holmes.)

not pay the entire mortgage at the time I remitted you the \$3,000. I hope it has not inconvenienced you in any way and that you will not be bothered with it. In case any question should come up you are at perfect liberty to tell them just exactly what the situation is as you know it. I do not anticipate this. But I think it only fair that you should be left so that you may explain anything from your own viewpoint that you may be asked to explain."

I have known Judge Shute and his wife since 1912. He was an intimate friend of my son-in-law, Archibald C. McKillop, who died in 1919. I first met the Shutes in Globe when I was visiting at my son-in-law's. I saw Judge Shute and Mrs. Shute when I was in Arizona as neighbors or friends, but I have no recollection as to the number of times in one week that I would see them. Their residence was within walking distance, and we visited the Shutes back and forth in a friendly way. Judge Shute has befriended me. He was a friend in need, a friend indeed. He was of assistance to me and my daughter's family at the death, burial and settlement of the affairs, and rendered a service that very few men probably would have rendered to us. I feel that I owe Judge Shute a debt of gratitude, and in so far as is within my power I would not do anything to injure him or to thwart his [127] desires. I believe that Judge Shute would like to have this property regarded as the separate property of his wife if it is the separate property. I have never been notified that bankruptcy proceed-

(Deposition of Mary E. Holmes.)

ings have been pending against him. I have had no notice of any kind that Judge Shute has been adjudicated a bankrupt. In May of this year I did have a letter from Miss Alice M. Birdsall of Phoenix, Arizona, in reference to this mortgage in question. I have that letter with me. (Witness produces and identifies letter). On examining this letter I note that it refers to this Shute mortgage, so that in May, 1928, I did know through this letter of Miss Birdsall's that Judge Shute had filed a petition in bankruptcy. I wrote Miss Birdsall a personal letter in reply to her letter.

(Letter produced and identified by witness, as follows:)

“Have just sent you a night letter that will be a disappointment to you; but our lawyer after reading your letter very carefully decided as you gave no clue as to your connection with the case, I had no right to disclose a matter that was between Judge Shute and myself to anyone whose connection with the case was not clear.

“Judge Shute was too good a ‘big brother’ to us in out time of need for us to do a single thing to embarrass him now in his misfortune. I am sorry to seem discourteous but I am sure you will understand my position, and respect my wish not to embarrass Judge Shute.

“Sincerely,

“MARY E. HOLMES.”

The telegram you show me addressed to Miss Alice M. Birdsall, 421 Fleming Bldg., Phoenix, Ariz.,

(Deposition of Mary E. Holmes.)

dated "Newton Center, Mass., May 28, 1928," is a telegram sent to Miss Birdsall in reference to this mortgage. It reads as follows:

"I am perfectly willing to give the information for [128] which you ask to such a person or persons as are entitled to it but do not feel it would be right for me to give it to anyone whose connection with the case is not disclosed.

(Signed) "MARY E. HOLMES."

I do not know the meaning of the term "purchase money mortgage." I have never bought any property. When I made this loan I understood I was advancing this money for the purpose of purchasing this property so that the Shutes might have it for their use. I don't think I have any other letters from Judge Shute with reference to this matter that I have not produced here to-day.

I do not know exactly what the balance is due on this note. There is approximately \$500 on the face of the note and between four and five hundred dollars interest. I couldn't tell you exactly. You can get those figures from Graham Foster. He has them.

Examining letter headed "Armstrong, Lewis & Kramer, Lawyers, First National Bank of Arizona Bldg., Phoenix, Arizona," dated "April 9, 1925," addressed to Mr. Daniel A. Rollins, 148 State Street, Boston, Mass.," signed "G. W. Shute," and with the words "cc to Mrs. Mary E. Holmes," appearing at the bottom of the letter, that is Judge Shute's

(Deposition of Mary E. Holmes.)

signature to the letter, but I couldn't say whether or not I received a copy of the letter. It refers to the mortgage property and reads as follows:

“Dear Sir:

“Replying to your favor of March 27th, 1925, re loan to Mary E. Holmes, Guardian, I have held up answering your letter for a few days owing to the fact that there has been pending for some time sort of tentative arrangements for a deal for the property on which Mrs. Holmes holds the mortgage.

“I am in receipt this morning of a letter from the real estate man representing me in the matter stating that within five days they should know whether or not the deal goes through. [129] If so I shall, of course, clean up the whole matter instantly, otherwise am writing Mrs. Holmes to-day what I expect to do. I understand fully the position which Mrs. Holmes occupies and will act accordingly.

“Very sincerely yours,

“G. W. SHUTE.”

And at the bottom:

“GWS-d.

“cc to Mrs. Mary E. Holmes.”

Examining letter headed “Armstrong, Lewis & Kramer, Lawyers, First National Bank of Arizona Bldg., Phoenix, Arizona,” dated October 21, 1924, addressed to me and signed “G. W. Shute,” I received this communication from Judge Shute, and it refers to the mortgage in question. Omitting

(Deposition of Mary E. Holmes.)

the personal references in the letter, it is as follows:

“Dear Mrs. Holmes:

“Your letter of September 23rd I found upon my desk upon my return from a hunt where I had been for a couple of weeks. I have neglected answering for several days due entirely to my being unable to get my own work out of the way. I hope that you will not think that I have neglected you.

“I note what you say about closing up the estate in Arizona, and really I see no reason why it should not be cleared up entirely as soon as you can get the loans out of the way, and my own in particular. I am very glad that the others have all been cleaned up and am trying very hard now to dispose of the place at Globe which would enable me to clean up with you entirely. I was offered \$6,000 for the place by Mr. Graham Foster but I did not consider it a good offer as I paid considerably more than that for the place and I have put a good many improvements on it of permanent value to it and I believe I can at least add to it \$500 by holding on a little while.” [130]

“When I came to Phoenix of course many of the things that I had in the way of check-books, receipts and so on, I have misplaced so that at this time I am unable to go back over my canceled checks to determine just the exact amounts that have been sent you. The bank-book I have, however, contains the items entered in your little slip without change except one. I find an item on April 17, 1922, \$87.50, which is not upon your list. I will endeavor to find

(Deposition of Mary E. Holmes.)

the canceled check so that there will be no error in that.”

Referring to the personal memorandum which I produced and which has been read into the record, of the payments of interest and principal on the Shute note, the \$3,000.00 payment came as a check signed “G. W. Shute,” but I know nothing about the source. Mrs. Shute never sent any check or payment on this mortgage loan only through her husband. Remittances have all been made by check signed “G. W. Shute.” I have never received personally or through my attorney any other letters or telegrams or other communications in reference to this Shute mortgage prior to or since I made the loan. I expect Mr. Foster has filed a claim in the Bankruptcy Court for the balance due on this mortgage and note. I have not personally filed a claim in the Bankruptcy Court. I have authorized my attorney, Graham Foster, of Globe, Arizona, to file a claim for me. I couldn't give you the date I gave notice to Mr. Foster that I desired him to file a claim because it was done through the attorney for the estate, who is in California. The attorney in California is Hugh M. Foster. His address is 334 Security Building, Los Angeles, California. I have no personal knowledge as to whether a bankruptcy claim has been filed for me in connection with this loan of mine. I asked Mr. Hugh Foster to attend to the matter. I wrote to him personally, but have not a copy of the letter. It was written about the 20th of August of this year. [131]

(Deposition of Mary E. Holmes.)

(Examination by Miss BIRDSALL.)

Mr. Graham Foster has not held this note for collection from the time the mortgage was made. The note was never in my possession. Hugh Foster has had that note. Well, the Old Dominion Bank held it, and I think Mr. Graham Foster has it now for collection. Mr. Hugh Foster left all my papers with the Old Dominion Bank. I could give the date since when Mr. Graham Foster has held the note if I had the letters that I had from the bank, but I couldn't tell you the exact date, but I should think possibly he had had it less than a year. I have endeavored to collect the note up to—yes, we have been endeavoring to collect it, yes. The only statements or letters from Judge Shute I have had that he was unable to pay this up in full at its due date are those which you had. The letters you had are the only letters I recall he has written on the subject. I did not know that Judge Shute's income for the year 1927 was over \$16,000.00. I had no information on that subject. I don't recall receiving any letter from Judge Shute in relation to this matter in April or May, 1928, or at approximately the time he filed the petition in bankruptcy in April, 1928. If Judge Shute testified in the Bankruptcy Court that he wrote me in April this year concerning this, I would not say he was mistaken. I will look at my files and my letters and see. I have written him that Mr. Foster has the note and the amount due upon it, but I couldn't give the date when I did it.

(Deposition of Mary E. Holmes.)

I couldn't say whether it was since the first of 1928. I will look through my file of letters. I made one search but I didn't look especially for any letter asking about any—personal letters I have had to him relative to the note. I mean, suppose I had written and asked him for a settlement of the note, and his reply, I wouldn't think that that had any bearing upon this. (Discussion by counsel and commissioner as to letters covered by subpoena and not produced and stipulation entered into [132] for their production.)

The COMMISSIONER.—By agreement of counsel for the trustee and for J. J. Mackay and counsel for Mrs. Holmes, Mrs. Holmes is to [133] make a further examination of her files and will produce such further correspondence as she may have from Judge Shute relating in any manner to the note and mortgage in suit, and such portions or the whole of those letters may be introduced into the record to have the same effect as if Mrs. Holmes had testified to each and every one and the contents thereof.

In accordance with the agreement of counsel as stated above by the Commissioner, the following are copies of letters and portions of letters produced by the witness:

(NOTE: All letters, except where otherwise noted herein, are on the letter-head of

ARMSTRONG, LEWIS & KRAMER

Lawyers

Phoenix, Arizona

First National Bank of Arizona Bldg.)

“September 21st, 1923.

“Mrs. Mary E. Holmes,

“40 Algonquin Road,

“Chestnut Hill, Mass.

* * * * *

“I have the usual luck in renting the house in Globe. The first tenants we obtained I got rid of at the end of the first month, and in order to put the house back in rentable shape it cost me \$198.00. We have some tenants in now that have been there for two months and are quite good, and have paid off the first shortage. The taxes are due next month, and will be paid when due. I am glad you feel as you do about your loans, and without doubt the interest will be forthcoming soon. I feel as you do about your street railway stuff, for it is very uncertain value in nearly all the states.” [134]

* * * * *

“Sincerely yours,

“G. W. SHUTE.”

“April 9, 1925.

“Mrs. Mary E. Holmes,
“40 Algonquin Road,
“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

“I today answered Mr. Rollins’ letter as per copy of which I enclose you herewith. As you will see I am not committing myself to Mr. Rollins in any way except that I am promising to take the matter up with you to a final determination.

“Supplemental to my letter to Mr. Rollins I wish to say that Mr. Keegan this morning advised me that he had a prospect of a sale of the place. It sounds almost too good to be true but strange things happen here with us and I do hope that the deal will go through; if it does not, however, I shall be very glad to do anything that you or Mrs. McKillip ask me to except to pay the full amount of the loan.

“The taxes are paid up until the end of 1923; the first installment of the 1924 taxes is now due and will be taken care of very shortly. The place is insured fully as per insurance policies which you hold, and if I am not mistaken, in the amount of about \$6000, at least ample to protect the loan in case of fire. The place, as you know is worth about \$7000. I paid \$6500 and put in a considerable amount of improvements that would run it well up over the additional \$500 mentioned.

“If Mrs. McKillip would like I would deed the place to her; do not deem this advisable, however,

for the reason that it would simply mean that she would be compelled to look out for it and have a piece of property in a strange land which she would not [135] want to sell for what she has in it. It seems to me far preferable that I pay up the interest, and to this end will pay as fast as I can on the past due interest, which should not take long now, and turn over to her the rent of the place which now amounts to \$50 per month. This rent has been used in taking care of taxes and improvements that I have mentioned to you heretofore but which are now up. It was necessary to do this in view of the fact that I was unable to meet these insistent demands in any other way as what I have been making here did not justify it. This, however, is entirely beyond the point for it does not interest you much, but I do hope that the matter will be straightened up to your entire satisfaction before long.

“Please remember me to Mrs. McKillip and Laura.

“With kindest regards, I am

“Very sincerely yours,

“G. W. SHUTE.”

(Copy.)

“April 9, 1925.

“Mr. Daniel A. Rollins,
“148 State Street,
“Boston, Mass.

“Dear Sir:

“Replying to your favor of March 27th, 1925, re loan to Mary E. Holmes, guardian, I have held up answering your letter for a few days owing to the fact that there has been pending for some time sort of tentative arrangements for a deal for the property on which Mrs. Holmes holds the mortgage.

“I am in receipt this morning of a letter from the real estate man representing me in the matter stating that within five days they should know whether or not the deal goes through. If so I shall, of course, clean up the whole matter instantly, [136] otherwise am writing Mrs. Holmes today what I expect to do. I understand fully the position which Mrs. Holmes occupies and will act accordingly.

“Very sincerely yours,

“GWD-d.

“cc to Mrs. Mary E. Holmes.”

“May 26, 1925.

“Mary E. Holmes,
“40 Algonquin Road,
“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

“My letter is delayed some ten or twelve days to you, due entirely to the fact that I have been en-

gaged in the trial of a case in the northern part of the State and got back into the office today for the first time.

“Your letter relative to the interest rather astounded me; to tell you the truth I did not know I was so far behind with the interest payments. It is strange how we let things go when there is not something prodding us up.

“I am enclosing you herewith Dr. Phillips’ check for \$50.00 and my own check for \$87.50, being three months plus.

“I am going over to Globe on Saturday and am going to undertake to do something with the place. The chances for selling it at what I am asking are rather slim, but I do think that I will be able to knock off \$500 or \$1000 from it and in this way dispose of it. Will let you know the outlook as soon as I return. Globe, I am told, is very slow. Copper is in a bad way and as a result of that all business is in a bad way in the city, but however that may be, it seems to me that I ought really to be able to get rid of the place very soon. I wish you to know that whatever your determination may be in this matter, I shall be very glad to meet [137] it in the spirit in which you give it.

“With the very kindest of regards, I am,

“Very sincerely yours,

“G. W. SHUTE.”

“June 5th, 1925.

“Mrs. Mary E. Holmes,
“40 Algonquin Road,
“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

“Since writing you the other day I have made a trip to Globe, and I am sorry to say that it now appears that I am going to have some trouble in selling the place. I have two nibbles, however, one from Mr. Pinson who is manager of the Penny Store, and who now lives in Globe, but he will not be able to give me a definite answer until he returns from a tour of inspection he has gone on, which will probably be about a month. Mr. Keegan writes me that Mr. Dougherty is in the market for a place of the character of mine, and he will see what he can do with him. Also, I am considering getting the money elsewhere to take up the loan.

“Dr. Phillips has sent me a check, somewhat in advance of the time it is due, for rent for the month of July 15, 1926, which I enclose herewith. He sent it because he is going away for a while, and wanted the rent paid before leaving. I will be able to send you an additional three months' interest before the end of the month.

“With kind regards, I am

“Yours sincerely,
“G. W. SHUTE.”

“July 18, 1925. [138]

“Mrs. Mary E. Holmes,
“40 Algonquin Road,
“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

“Enclosed herewith please find check for \$50.00, being the rent on the Globe place from July the 15th to August the 15th, inclusive.

“I wrote you at the time of sending the previous check that I expected to send you another quarter’s interest before the end of the month. It has been such a dry time around here for us that I found this impossible, and was also disappointed in securing the sum of money through some other property that I had rather counted upon. I trust, however, that you will forgive this misrepresentation, if such you may call it, for I surely tried to do it.

“I think I told you that I had a talk with Mr. Pinson of the Penny Stores people, and I have high hopes of getting rid of the place to him. He has been gone on a survey of the stores however, for a matter of six weeks or so, and I have not been able to get in touch with him. He is to give me his answer upon his return. I have one or two other nibbles that may materialize, and in the event they should not, I have a chance of getting the money from another source to pay off this loan. I have been dragging it along somewhat, inasmuch as it appeared

that I would be able to eliminate the property and the debt at the same time.

* * * * *

“Very sincerely yours,
“G. W. SHUTE.” [139]

“August 17, 1925.

“Mrs. Mary E. Holmes,
“40 Algonquin Road,
“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

“I beg to enclose you herewith check of B. E. Phillips for \$50.00 made payable to myself, which I have endorsed to you. This is the rent on the Globe property up to and including the 15th day of September, 1925.

“When in Globe recently I had a talk with Mr. Pinson whom I told you about, and he still delays the matter by saying he does not yet know exactly what his future course will be relative to business in the Globe district. Both Mr. Keegan and myself are trying hard to interest one or two other parties, and I am taking the matter up today with John Dougherty who I understand is in the market for a place.

“It has been very quiet here this summer. In fact, so quiet that we have been compelled to rather adjust ourselves to the circumstances. We hope, however, that it is only during the months of July and August, which is generally the case.

“With kindest regards to yourself and all the other members of the family I am

“Very sincerely yours,

“G. W. SHUTE.”

“February 18, 1926.

“Mrs. Mary Holmes,

“40 Algonquin Road,

“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

* * * * *

“Referring to the first mortgage on my place, the [140] situation is simply this. It can be sold at any time for more than enough to pay off the mortgage. On the first of the year I made a contract for the sale of some mining property out of which I will realize at the end of this year \$4,000 over and above all other income that I have. This money should come in without fail, as the contract for the purchase of the property is going along until the people who are taking it have invested some \$25,000 already, and they will be obliged to take it because of the expenditures thus far made. As I have heretofore told you, however, I would far and away prefer doing just what you want me to do in this matter, and if you would rather, I will deed it to Mrs. McKillop at any time she may ask me to. I think I explained, however, that this would not give her the income from it she now has because of the expense incidental to keeping it up, as she will get the \$50 per month as she has been getting it regularly. The matter, however, will be taken up this

year whether it rains or whether it shines, for it is a dead horse indeed to me.

* * * * *

“Yours sincerely,
“G. W. SHUTE.”

“March 22, 1926.

“Dear Mrs. Holmes:

“Enclosed herewith please find personal check for \$50.00 being the usual monthly interest payment on my loan.

“It was delayed a few days because of my absence from town.

“I was unfortunate enough to lose Dr. Phillips as a tenant. He bought the Eugene Miller property, just at the top of the hill. I have two prospective renters and think I’ll get a good tenant out of these two, and am trying to get \$60, for the place instead of \$50.00. [141]

“I saw Hugh Foster when I was over there some days ago, and told him of your letter to me and he at that time told me he would prepare the necessary papers for our signatures, whatever they are. However, I found he had been called to Calif. on account of the illness of his wife and there seems to have been no attempt made to carry your wishes into effect. However, we will sign anything at any time and you may depend upon getting your interest monthly and a little upon the past due

stuff until he gets around to it and I'll then bring it all up to date.

* * * * *

“Sincerely yours,

“G. W. SHUTE.”

“April 19, 1926.

“Dear Mrs. Holmes:

“Enclosed herewith please find check for \$50.00 to apply.

“The place is not rented, but I have been expecting to hear daily from a fellow who, in consideration of our putting in a little furniture, will pay \$60.00 for the place.

“We are all well. Have had a most unusual spring.

“Remember me to Mrs. McKillop.

“Sincerely,

“G. W. SHUTE.”

“May 20, 1926.

“Mary A. Holmes,

“40 Algonquin Hill,

“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

“Enclosed herewith please find check for \$50.00 to apply on the matter of the loan.

“The last time I was over to Globe I was told that Mr. [142] Foster had given up his practice in Globe and had moved to California. He did not come to see me as he passed thru and I am

wondering whether or not you have been depending upon either Mr. Foster or me to get rid of your matters in Globe.

“The house has been vacant for this is the third month, and while we have had one or two applications to rent it, the people who desired it were not such as we want in the house and in consequence it has remained vacant. We have been negotiating for the past month for a sale of it but I do not believe that the people who are inquiring are very much interested in it unless they can get it for half what it is worth. That seems to be about the run with property in Globe at this time. However that may be, I expect to put a little money on it this summer and keep it looking as though it really belonged to some one, and probably by the beginning of winter I will be able to turn it to someone to our mutual advantage.

“In any event, I do not believe that the loan will be carried longer than this year as I have the money coming in almost certainly to take it up at the end of the year—that is, by the first of January, 1927. I will pay you along as I have been doing, \$50.00 per month, so that the interest will be kept well out of the way and a little applied on the amounts that are past due. I do hope this will be satisfactory, and unless the conditions are such that you need it, it does seem to me that you are getting a good rate upon your money, for, as you

well recognize, the rate of interest is exceedingly high.

* * * * *

“Very sincerely yours,
“G. W. SHUTE.” [143]

“June 17, 1926.

“Mrs. Mary E. Holmes,
“40 Algonquin Road,
“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

“Please find enclosed herewith check for \$50.00 to apply on loan. I am sorry that the house has not yet been rented. I have had two or three nibbles for it but nothing that I cared to accept. I have lately had the year and place cleaned up so that it looks real well. There can be but little doubt but what it will be rented during the winter, but whether it will or not makes small difference to me in sending the payments, for they will come from month to month whether the place is rented or not.

* * * * *

“Very sincerely yours,
“G. W. SHUTE.”

“July 17, 1926.

“Mrs. Mary E. Holmes,
“40 Algonquin Road,
“Chestnut Hill, Mass.

“Dear Mrs. Holmes:

“Please find enclosed herewith check for Fifty Dollars (\$50.00) to apply on my note.

“I had a letter from Mr. Foster the other day and in the letter he expressed the same thought to me which you have communicated to me several times, namely, that I reduce the amount of the principal and then pay the \$50 per month as I have been doing. I have not answered Mr. Foster’s letter for the reason that I did not hardly know how to answer it, for I could but say to him, as I now say to you, that if I had the money necessary to pay off this note I would do it tomorrow. There is a chance that I might get [144] a little money very soon and if I can I will borrow it and pay off the entire amount.

“Mr. Foster spoke something about the taxes, I have not paid the taxes for the last year and this year, however this will be done, and you need have no fear or anxiety along that line. The place is unrented but I have two or three people who are looking at it and I believe that I can put in \$100 or so in refinishing it on the inside and it will readily rent by the time school opens September 1st.

* * * * *

“Very sincerely yours,

“G. W. SHUTE.”

“Aug. 17, 1926.

“Dear Mrs. Holmes:

* * * * *

“You are right everywhere. There can be no question about that. It is not disposition Mrs.

Holmes it is dire necessity. I have had a lot of undiluted hell the last four years, but I think I can see the rising sun. I will pay the taxes this month. I think also that very soon I'll pay the whole loan. Counting chickens before they are hatched has been a grave fault I'm not going to do that any more—But think I can see my way.

* * * * *

“Ever your friend,
“G. W. SHUTE.”

“September 17, 1926.

“Mrs. Mary E. Holmes,
“40 Algonquin Road,
“Chestnut Hill, Mass.

“Dear Mrs Holmes: [145]

“Enclosed herewith you will please find check for \$3000 to apply on mortgage on the Globe place. I am very glad to say that I had all of this money to pay you so as to retire the mortgage in full but father's unfortunate illness and death took about \$2000 of the amount I had to pay the debt, and hence you will be a few hundred dollars short upon your account for a while yet. I expect however within the next month or six weeks to retire the whole debt, and upon the final remittance to you, will forward you the necessary discharge for clearing the record.

“You do not know how glad I am to be able to send this to you for I know that you need it. I am sorry indeed if the investment has ever caused you any worry, but deep in my heart I do not feel

that it has, and it has been drawing a rate of interest which would be impossible for you to secure any other place, at least East of the Mississippi.

* * * * *

“Very sincerely yours,

“G. W. SHUTE.”

“November 16, 1927.

“Dear Mrs. Holmes:

“I do not wonder at all that you are worrying over the settlement of my note. I hope it isn't too much for you. There is no need in worrying you with non essentials, it is sufficient to say I have had a hard time since I came down here, but can now see the coming dawn.

“When last I wrote you I had the money to discharge this debt. In fact had accumulated it for that express purpose. When I wrote you I wanted your own figures in interest etc., as I did not care to figure the amount for you. It was many days before I heard from Hugh Foster in Los Angeles, and when I did hear all he gave me was the payments etc. which I already had. In the meantime [146] a pressing condition arose here which made it necessary in my opinion to use the money which I did.

“This accounts for the delay.

“I have about \$2000 coming to me on Dec. 8th,

and feel sure it will be in at that time. From this I will settle your note in full.

* * * * *

“Sincerely your friend,

“G. W. SHUTE.”

“G. W. SHUTE

“Superior Court Judge

“Globe, Arizona.

“November 21, 1921.

“Mrs. Mary E. Holmes,

“40 Algonquin Road,

“Chestnut Hill, Mass.

“My dear Mrs. Holmes:

“Two of the policies upon the property on which you hold mortgage have expired and have been renewed; one in The Home Insurance Company of New York, No. 1119 for \$2,000.00, which expires November 15, 1924, to which is attached the mortgagee’s clause running to Mary E. Holmes, Guardian; the other made out in the same manner, expiring June 27, 1924, for \$1500.00, in the Great American Surety Company of New York. The Gila County Abstract Company being the agent for The Home Insurance Company, and the Copper Belt Realty Company being the agent for the Great American Surety Company, at this date.

“I have these policies here and I think it advisable for me to keep them, unless you desire me to forward them to you; but in any event file my letter so that you may have full note of the insur-

(Testimony of Mrs. George W. Shute.)

ance. I think the property is insured for six thousand [147] dollars, the other policies not having yet expired.

“Very sincerely yours,

“G. W. SHUTE.”

TESTIMONY OF MRS. GEORGE W. SHUTE,
FOR TRUSTEE.

Taken at adjourned first meeting of creditors before Hon. R. W. Smith, referee in bankruptcy, on November 16, 1928, there being present the referee, Thomas W. Nealon, Esq., trustee, Miss Alice M. Birdsall, counsel for J. J. Mackay, one of creditors of estate, Orme Lewis, Esq., counsel for bankrupt, George W. Shute, bankrupt, and Mrs. George W. Shute.

(Examination by Mr. NEALON, Trustee.)

I am the wife of George W. Shute, the bankrupt in this matter. My name is Jessie M. Shute. Judge Shute and I live at the same place we were living last April, #66 West Lynwood Street. I drive an Essex car. It is kept on the premises there. In last April or May I don't recall especially that Judge Shute drove that car considerably, to and from town—I suppose he did. We both used the car at that time.

Q. Now, Mrs. Shute I am showing you copy of the account, of the savings account standing in your

(Testimony of Mrs. George W. Shute.)

name at the First National Bank of Arizona; that is, this is a substituted copy, verified by Mr. Ganz.

(Statement exhibited to witness.)

I want to call your attention to the first deposit in that account in Oct. 28, 1926, of \$1100.00, and will ask you where that money came from.

A. Why, I saved that money.

Q. Yes, but we will confine ourselves to the one statement, the one item of \$1100.00; do you remember where that money came from?

A. I can't tell you that. [148]

Q. That is the deposit with which the account was opened.

A. It was money I had saved; I got it in different ways.

Q. Will you explain that a little more fully, Mrs. Shute; from what did you save it?

A. Well, I sold my piano in Globe and saved that money; that was one thing; then we had a school-teacher who was rooming and boarding with me. I had her for three years, and I saved most of that money, and saved some from my housekeeping account; my husband gave me money to buy groceries and run the house, and I saved some from that.

Q. I have reference particularly to this first \$1100. Is it your recollection that that fund came from the sale of the piano in Globe, money you collected from the school teacher and what you saved from household expenses?

(Testimony of Mrs. George W. Shute.)

A. I think so, yes. I don't think I remember when I sold the piano in Globe. It is since we left Globe. We came over here about the end of 1922, I think, and it was since then I sold the piano. I think it was \$150 or \$200 that I got for it. I can't give approximately how much I saved that this school-teacher. She was with me a long time; sometimes it would be one amount and sometimes another. I couldn't say the approximate total amount from that unless I added it up.

Q. This household account, now, and your savings from that. Prior to October 28, 1926, when this account was opened; can you give a general idea of about how much that would be of your savings?

A. Sometimes I saved more than others; sometimes my husband would give me more than at other times.

It wasn't always the same. I have tried to be economical and when I was able to save more I saved it. My daughter was married three years ago. Since that time my expenses have not been [149] lighter. I have had week-end guests and company. It wasn't any more, because she taught school part of the time, but there was a good deal of company. I mean subsequent to her marriage. The first deposit was \$1100. Prior to depositing it in this savings account, I kept it. I did not keep it in the bank. I kept it with me.

Q. You have never had any bank deposit prior to the time of this deposit?

(Testimony of Mrs. George W. Shute.)

A. I think I have, but I don't know whether I ever did here or not. Do you mean here in Phoenix?

Q. Yes, in Phoenix.

A. I don't think so,—did I (to Judge Shute). He thinks I didn't.

Q. Was any of this first deposit of \$1100 transferred from any other bank to this? A. No.

Q. You just had the money in your possession?

A. Yes.

Q. Well, we will take the next deposit of \$500,—November 18, 1926; can you tell me the source of that deposit?

Judge SHUTE.—I can suggest it to her, so she will remember, with your permission.

The TRUSTEE.—If it will help her to recollect.

Judge SHUTE.—I think that was those two little checks I gave you, when Virginia and Eileen were over there, don't you remember?

Mrs. SHUTE.—I don't remember.

The TRUSTEE.—Even after Judge Shute has refreshed your memory you do not recall?

Mrs. SHUTE.—No, I just don't remember. Let me see, that was the year Dad died, wasn't it (to Judge Shute) I am sorry, but I just can't recall.

Q. On June 24th, 1927, there is another deposit of \$500.00; [150] have you any recollection of where you received that money?

A. Yes, I saved part of that money.

Q. And the part you did not save?

(Testimony of Mrs. George W. Shute.)

A. Probably my husband gave me some; he sometimes gave me \$20 or \$50.

Q. And you would save that?

A. I would try to.

The deposit of \$100 on July 21st, 1927, I may have saved; I can't remember. The similar sum of \$100 on August 22, 1927, I remember. That was when I came back from California; I had saved that much. My daughter was with me that summer and she helped me. The \$100 on September 9, 1927, I think I saved, and the \$100 on September 22d of the same year. The deposit of \$50.30 on November 15, 1927; I had a house in Globe that I always received rent from until you levied on it; I got about \$50 a month for that, and I always put that in the bank unless I had to pay insurance or taxes with it. I always had the house rented, and it paid \$50 a month. I cannot recall, except as I have told you, the source of the deposit of \$1050.20 on January 4, 1928. I just gathered it up. I don't think I have any independent recollection of that deposit of \$50 on the same day. The deposit of \$60 on February 28, 1928; I think, after the 20th of the month that way, it would be savings from the house; sometimes I would have \$10 or [151] so left over, and I would put that with it, and the deposit of \$50 on March 17, 1928, was the same thing, I suppose. Referring to the deposit of \$100 on April 14, 1928, I will ask Judge Shute about the source of that. Sometimes my husband gave me \$20 or \$50 and sometimes I would have \$10 or \$20 left over, and

(Testimony of Mrs. George W. Shute.)

when I did I always put that in. I remember the circumstances of the \$1500 which was withdrawn on April 14, 1928. I took it out for my daughter. The money was paid to Mr. Creed, my daughter's husband, who wanted to buy a little grocery store in Gilbert with his father. That was what the money was for. They called it a loan, but I never expected to get it back. I received a note for it which I have in my possession. All the money described in this account has been withdrawn from the bank except \$200 or \$300. When I ceased to get the rent from my house in Globe, I asked why and was told that you had levied on my house there and instructed the tenant not to pay me the rent, and I called Clifton Mathews of Rice and Mathews and asked him what I could do and if he would look after my interests there for me, and he said he would. He said for me to draw the money out. I drew part of it out and paid him his fee; part of it I drew out for my own expenses. Mr. Mathews is my attorney in regard to the matter. The rest of the money is in the bank, I suppose. I mean the \$200. I probably have spent all except the \$200 in the bank. I paid him out of it. My husband talked to him about the bankruptcy proceedings. I do not know whether anyone else was present at these talks with Mr. Mathews. Mr. Mathews was not present at the time the money was drawn out. I went alone to get it, and cannot tell you the name of the teller. It was not Mr. Armstrong or Mr. Ganz or an officer of the bank that I saw when I

(Testimony of Mrs. George W. Shute.)

drew the money out. I remember the circumstances of a note executed by Joe Noble and endorsed or guaranteed by Judge Shute. Mr. Noble personally asked me to loan him \$1200, that he was in financial trouble, and [152] I loaned him the money. I don't know whether the note is to the First National Bank of Arizona. He was to pay the bank so much a month, and then it was to be transferred to me so I could get the interest. If it appears on the books of the National Bank of Arizona as being a loan of \$1200 made by them on October 18, 1927, the note was probably made to the bank. I didn't sign the note as surety. He signed it for me. Mr. Noble and I were there when it was signed.

Judge SHUTE.—If I may tell her just what the circumstances are she would remember. You tell Mr. Nealon (to Mrs. Shute) just what the circumstances were; how you met Joe Noble, and what you were doing, and how it came about and then you will remember that I fixed the arrangements with the directors of the bank. Tell Judge Nealon where you met Joe, where it took place, and then you will recall it.

I think I was in Goldwaters' store, and Mr. Noble came in and said he was in great trouble and wanted me to help him. He said he had told my husband about it and that he couldn't do anything for him, that his only chance would be to ask me, and then we went up to my husband's office and Mr. Noble and I talked about it, and Mr. Shute said he would go downstairs to the bank and see about it, and he

(Testimony of Mrs. George W. Shute.)

did. I think I went home, and Mr. Noble came to the house that night, or very soon after. I felt awfully sorry for him, and Mr. Shute said he could fix the matter up for him, and he did it. The note was paid on February 27, 1928, by withdrawal from my account of some \$1200. We had kept it there hoping that he would pay \$40 or \$50 a month on it.

(Examination by Miss BIRDSALL.)

I don't believe I can tell you the date that I drew the savings account from the bank on the advice of Mr. Mathews. It was some time in June, I think, I called Clifton Mathews on the telephone from my house, but can't remember the date. [153]

Judge SHUTE.—I remember it was right after one of our rows about the house.

I hadn't had any rent from the house, and I think the fire insurance was due on it. I can't tell you how long it was after I called him up before I withdrew the money. I don't think I withdrew it all at once. I think I took out \$1000. I wanted \$500 to use for an expense of mine—of ours. Then I went to California during the summer and I suppose spent it in different ways. Mr. Mathews told me I could draw it out if I wanted to after I had told him of the conditions. I have spent all of the amount that I withdrew. I have not deposited it elsewhere. I paid Mr. Mathews \$150 for his fee. The \$1100 approximately with which I started this savings account I have testified I had in my personal possession. I had part of it in the house in

(Testimony of Mrs. George W. Shute.)

currency and part of it I had on my person. Sometimes I would have \$20 and sometimes \$50, that would make \$70; by and by when it got up to \$1000 or more and I was afraid to keep it any longer, I put it in the bank. I got as much as \$1100 collected that way before I deposited it. I had a deposit when I lived in Globe, but I had withdrawn that from the bank before this. It took all we had to live. Virginia was going to Teachers College and we were heavily in debt when we came down here. I can take you out and show you in the hall the place where I carried the \$1100 with me. I have often carried \$1000 with me. The \$1050.30 that was deposited on January 4th last in this account was money I had saved up and had around the house the same way. He might have given me \$50 or something like that. I don't recall receiving the large amount from any particular source. The \$100 deposited in November and the \$50 in December probably came from the rent for the house. When Eileen stayed with me I usually put that money in the bank. She was one of the family and I didn't go to much extra expense for her. [154]

(Examination by the TRUSTEE.)

I have the Noble note and Creed note in my possession.

Judge SHUTE.—I would like to make a little statement so that Mrs. Shute will remember about this money deposited. You will remember (to Mrs. Shute) after Aunt Mary's death, the property in

(Testimony of Mrs. George W. Shute.)

Prescott was sold to Johnny Robinson, and that I used the money secured from this property in living expenses and other matters around Globe; you remember, don't you, that after that money came in, we used it in the purchase of that little bunch of cattle, and that we had an arrangement that I should return this money to you as fast as I could.

Mrs. SHUTE.—They were part my cattle.

Mr. SHUTE.—And I didn't get anything out of the cattle—

Mrs. SHUTE.—You certainly didn't.

Judge SHUTE.—And that after we got on our feet down here I began to make up to you this money that I had misused for the sale of this property.

Mrs. SHUTE.—Yes, I remember that.

Judge SHUTE.—After we moved to Roosevelt Street, the arrangement was made that I should return as much of this as I could, to make up to you for that. Now, do you remember after we came down here, and after Mr. Duncan had rented the place in Globe, one of the conditions of our arrangement was that whenever the rent came in for this house, I was to add \$50 to it, and when these deposits of \$50 and \$100 were made, it was in pursuance of the arrangement we had made, and all of the moneys deposited had either been saved or I had made them up, for the amount of money I had used for the sale of the property at Prescott, belonging to you. Now, coming to Mr. Mathews, you

(Testimony of Mrs. George W. Shute.)

remember do you not, that after I had been served with notice, I advised you to secure your counsel?

Mrs. SHUTE.—Yes. [155]

Judge SHUTE.—Do you remember you asked me who you had better secure and I suggested Mathews?

Mrs. SHUTE.—Yes.

Judge SHUTE.—A few days after that conversation I went to Globe and saw Mr. Mathews and had him call you over the telephone and you and he talked the matter over and made your arrangement.

Mrs. SHUTE.—Yes.

The TRUSTEE.—Mrs. Shute was this understanding between you and Judge Shute in writing?

Mrs. SHUTE.—I don't understand.

The TRUSTEE.—In regard to the money as to the cattle and from the sale of the property in Prescott.

Mrs. SHUTE.—He mortgaged the Prescott property and bought these cattle, and he and his younger brother and I were to be partners. It was my property and his brother was to look after the cattle for me,—his younger brother.

The TRUSTEE.—Judge Shute's younger brother?

Mrs. SHUTE.—Yes, Frank Shute. He was to look after the cattle. We had a very hard time. We tried as hard as we could for seven years with those cattle, but we couldn't make expenses. Frank did the best he could, but I was called on for money all the time.

(Testimony of Mrs. George W. Shute.)

The TRUSTEE.—Those were bad cattle years, were they not?

Mrs. SHUTE.—Yes, my husband finally sold them and paid the mortgages off as nearly as he could on the property we had up there, but he couldn't do that,—and finally he had to sell the property to pay off everything and the mortgages on the places up there. The little house that we had left up there, the one on Devereaux Street, that was clear, we sold that and bought the house on the hill,—you remember, Miss Birdsall, where we lived.

The TRUSTEE.—That is the property you own now?

A. Yes, that was bought with the money from the cattle and [156] from the house in Prescott that had been sold.

The TRUSTEE.—Was there any agreement between you and Judge Shute in writing as to your reimbursement for these losses?

Mrs. SHUTE.—No, I don't think so.

The TRUSTEE.—You don't think there was any?

Mrs. SHUTE.—No.

(Examination by Mr. LEWIS.)

That was my own savings account, and the reason for Judge Shute having the right to withdraw it was because sometimes I would want him to bring me money out of it, and sometimes he made deposits for me. He was to add \$50 to the rent money and deposit it for me. His office was right in the

(Testimony of Mrs. George W. Shute.)

bank building and sometimes I didn't want to come downtown. It was not my understanding that Judge Shute had the right to withdraw any of that money for his own use, not unless I knew about it.

It was thereupon stipulated by and between the trustee, counsel for objecting creditor and counsel for the bankrupt, that Mrs. Burns, the stenographer who took the proceedings before the referee, was qualified and would testify to the correctness of the transcript.

Creditor's Exhibit No. 1 was then admitted in evidence, as follows: [157]

CREDITOR'S EXHIBIT No. 1.

In the Superior Court of the State of Arizona, in
and for the County of Maricopa.

Copy.

No. 28133.

J. J. MACKAY,

Plaintiff,

vs.

G. W. SHUTE,

Defendant.

COMPLAINT.

Plaintiff complains of defendant and for cause of action alleges:

I.

That defendant is a resident of the County of Maricopa, State of Arizona.

II.

That on the 9th day of February, 1918, plaintiff at the request of defendant, became surety for the payment by the defendant to the Gila Valley Bank & Trust Company at Globe, Arizona, of the sum of Twenty Thousand Dollars (\$20,000.00), with interest; and thereupon and upon said date, plaintiff, with the defendant, and as surety for the defendant, as aforesaid, made, executed and delivered to said Gila Valley Bank & Trust Company at Globe, Arizona, a certain promissory note in writing, whereby defendant and plaintiff promised to pay to said Gila Valley Bank & Trust Company, for value received, the sum of Twenty Thousand Dollars (\$20,000.00), with interest, both principal and interest payable on demand, said promissory note being signed "G. W. Shute, J. J. Mackay"; that the consideration for the execution of the said promissory note for Twenty Thousand Dollars (\$20,000.00) was received by the said defendant, G. W. Shute, and that this plaintiff never received any consideration or value for said [158] note, but made and executed said promissory note only as surety and as an accommodation of the said defendant; that thereafter said Gila Valley Bank & Trust Company made demand upon said defendant, G. W. Shute, for the payment of interest due on said note in accordance with the terms thereof, but said defendant, G. W. Shute, made default in the payment of said interest due on said note, and failed, neglected and refused to pay the same upon

the demand of said Gila Valley Bank & Trust Company; that thereupon said Gila Valley Bank & Trust Company notified this plaintiff of said default by said G. W. Shute, and demanded the payment of said interest due upon said note from this plaintiff; that this plaintiff thereafter notified said defendant of said demand so made upon him and requested said defendant to make payment of said interest due upon said note to said Gila Valley Bank & Trust Company in accordance with the terms of said note, but that defendant failed, neglected and refused to make payment of said interest on said note, and that this plaintiff between the 30th day of December, 1918, and the 30th day of December, 1920, was compelled to pay and did pay to said Gila Valley Bank & Trust Company for the use of said defendant, G. W. Shute, for interest on said note aforesaid, the sum of Three Thousand Seven Hundred Six and $34/100$ Dollars (\$3,706.34); and that on said last named date, to-wit, December 30, 1920, this plaintiff, upon the demand of the said Gila Valley Bank & Trust Company was compelled to execute and did execute with said G. W. Shute a renewal note for the balance due on the principal and interest of said indebtedness represented by said note so executed on the 9th day of February, 1918, as aforesaid, by the terms of which renewal note defendant and this plaintiff promised to pay to said Gila Bank & Trust Company upon demand the sum of Nineteen Thousand Six Hundred Fifty and $95/100$ Dollars (\$19,650.95) with interest thereon at the rate of eight per cent per annum, [159] in-

terest payable on demand, said note being signed "G. W. Shute, J. J. Mackay"; that thereafter said defendant, G. W. Shute, defaulted in the payment of the interest due on said last named note, after demand made upon him by said Gila Valley Bank & Trust Company for the payment thereof, and that said Gila Valley Bank & Trust Company thereupon demanded payment of said interest by this plaintiff; that this plaintiff thereafter requested the payment of said interest by said defendant, G. W. Shute, but that said defendant, G. W. Shute, failed, neglected and refused to pay said interest to said Gila Valley Bank & Trust Company, and that this plaintiff was compelled to pay, and did pay to the Gila Valley Bank & Trust Company for the use of said defendant, G. W. Shute, the amount of Seven Hundred Eighty-six Dollars (\$786.00) interest due upon said last named note; that thereafter and upon the 2d day of July, 1921, upon the demand of said Gila Valley Bank & Trust Company, this plaintiff was compelled to execute, and did execute, with said G. W. Shute, a renewal note for the balance of the principal and interest due on said indebtedness to said Gila Valley Bank & Trust Company, represented by said note dated December 30, 1920, as aforesaid, by the terms of which renewal note defendant and his plaintiff promised to pay the sum of Nineteen Thousand Nine Hundred Seventy-eight and 70/100 Dollars (\$19,978.70) to said Gila Valley Bank & Trust Company on demand, with interest at the rate of eight per cent per annum thereon, payable on demand, said renewal note being

signed, "G. W. Shute, J. J. Mackay"; that thereafter said defendant, G. W. Shute, defaulted in the payment of the principal and interest due on said last named note after demand for the payment thereof made upon him by said Gila Valley Bank & Trust Company, and that said Gila Valley Bank & Trust Company thereafter demanded the payment by this plaintiff of all the principal and interest due and unpaid upon said indebtedness, for the payment of which plaintiff became [160] surety on the 9th day of February, 1918, as aforesaid, and then represented by said note executed on the 2d day of July, 1921, as aforesaid; that this plaintiff requested said defendant, Shute, to make payment of the said amount of principal and interest due on said indebtedness to said Gila Valley Bank & Trust Company, but that defendant failed, neglected and refused to pay the same, and that plaintiff was compelled to pay, and did pay, for the use of the defendant, G. W. Shute, to said Gila Valley Bank & Trust Company and to its successor in interest as holder of said note, the Valley Bank, between the 13th day of December, 1922, and the 16th day of June, 1927, the sum of Twenty-six Thousand Eight Hundred Thirty-nine and 67/100 Dollars (\$26,839.67) for principal and interest due upon said indebtedness represented by said promissory note dated July 2, 1921; that plaintiff has been compelled to pay and has paid to the Gila Valley Bank & Trust Company and the Valley Bank for the use of defendant, by reason of plaintiff becoming surety for the payment of said

amount of Twenty Thousand Dollars (\$20,000.00) by said defendant, G. W. Shute, to the Gila Valley Bank & Trust Company, on the 9th day of February, 1918, as aforesaid, the sum of Thirty-one Thousand Three Hundred Thirty-two and 01/100 Dollars (\$31,332.01); that said sum of Thirty-one Thousand Three Hundred Thirty-two and 01/100 Dollars (\$31,332.01) was paid by this plaintiff to the Gila Valley Bank & Trust Company at Globe, Arizona, and to its successor in interest, The Valley Bank, wholly for the use of said defendant, G. W. Shute, on account of the indebtedness represented by said note hereinabove described, executed on the 9th day of February, 1918, for the principal sum of Twenty Thousand Dollars (\$20,000.00).

III.

That no part of said amount of Thirty-one Thousand Three Hundred Thirty-two and 01/100 Dollars (\$31,332.01) so paid by plaintiff to the Gila Valley Bank & Trust Company and the [161] Valley Bank for the use of defendant as aforesaid has been paid to the plaintiff, although plaintiff has often requested the payment thereof by the defendant.

WHEREFORE, plaintiff prays judgment against said defendant for the sum of Thirty-one Thousand Three Hundred Thirty-two and 01/100 (\$31,332.01), and for his costs of suit herein expended.

ALICE M. BIRDSALL,
Attorney for Plaintiff.

State of Arizona,
County of Maricopa,—ss.

J. J. Mackay, being first duly sworn on oath, deposes and says:

That he is the plaintiff in the foregoing complaint; that he has read said complaint and knows the contents thereof, and that the same is true in substance in fact of his own knowledge, except as to those matters therein stated upon information and belief, and as to such matters he believes it to be true.

J. J. MACKAY.

Subscribed and sworn to before me, Bess M. White, a Notary Public in and for the County of Maricopa, State of Arizona, this 31st day *or* March, 1928.

[Notarial Seal]

BESS M. WHITE,
Notary Public.

My commission expires June 18, 1921.

United States of America,
District of Arizona,—ss.

In the United States District Court in and for Said
District, Arizona Division. [162]

No. — IN BANKRUPTCY.

In the Matter of G. W. SHUTE, Bankrupt,

PROOF OF CLAIM.

United States of America,
District of Arizona,
State of Arizona,
County of Maricopa,—ss.

At Phoenix, in said District and State on the 30th day of April, A. D. 1928, came J. J. Mackay of Phoenix, in the County of Maricopa, and State of Arizona, and made oath and says:

That the above-named bankrupt, the person by or against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and is still justly and truly indebted to J. J. Mackay in the sum of Thirty-one Thousand Three Hundred Forty-three and 81/100 Dollars, with interest from April 30, 1928, at six per cent per annum; that the nature and consideration of said debt is as follows: Money paid for the use of G. W. Shute as more fully appears by copy of complaint hereto attached and made part hereof.

That no part of said debt has been paid, that there are no setoffs or counterclaims to the same. That the only securities held by said None for said debt are the following: —————.

That claimant has not, nor has any person by his order, or to the knowledge or belief of said deponent, for claimant's use, had or received any manner of security for said debt whatever. That no judgment has been rendered on said debt nor has any note been received for such account.

J. J. MACKAY.

Subscribed and sworn to before me this 30th day of April, A. D. 1928.

[Seal]

BESS M. WHITE,
(Notary Public.)

My commission expires June 18, 1931.

Filed Apr. 30, 1928. [163]

R. W. SMITH,
Referee.

This claim allowed for the sum of \$31343.81 this 16th day of Nov., 1928.

R. W. SMITH,
Referee.

(Back)

(POWER OF ATTORNEY attached to Alice M. Birdsall and sworn to by J. J. Mackay April 30, 1928, before Bess M. White, Notary Public, Maricopa County, Arizona.)

(Formal endorsement on back of claim not copied here.)

(Attached to claim are three promissory notes as follows:)

Globe, Arizona, July 2d, 1921.

No. _____.

Due on demand.

On demand ——— after date, for value received, I promise to pay to The Gila Valley Bank & Trust Company, or its order, Nineteen Thousand Nine Hundred Seventy-eight and 70/100 Dollars, \$19,978.70, at its banking house in Globe, Arizona, with interest thereon at the rate of eight per cent per annum from *annum* until paid, interest payable on demand. If default be made in the payment of interest when due, this note, principal and interest, shall at once thereupon, at the option of the holder, become due and payable, without notice to or demand upon the makers, endorsers or guarantors, or any of them. If this note be placed in the hands of an attorney for collection, then the makers and endorsers hereof agree to pay in addition to the principal and interest due hereon, an amount as attorney's fees equal to ten per cent of the principal and interest then due on this note. The makers and endorsers of this note severally waive presentment [164] hereof for payment, protest and notice of nonpayment and of protest.

P. O. Miami, Arizona.

G. W. SHUTE,
J. J. MACKAY.

(Back)

June 30, 1927.

In consideration of the agreement of J. J. Mackay to forego bringing suit against me for payments made by him upon indebtedness represented by this note until on or after October 1, 1927, I hereby waive the statute of limitations hereon, and agree that in the event said Mackay brings suit against me thereafter, and within a period of two years from October 1, 1927, I will not plead the statute of limitations as a defense to said suit.

G. W. SHUTE.

(Stamp)

No. 28133.

In Evidence.

Plaintiff's Exhibit No. C.

Filed May 21, 1928.

Walter S. Wilson, Clerk.

By M. M. Hill, Deputy.

No. ———, Globe, Arizona, December 30th, 1920.

\$19650.95.

On demand after date, for value received, I promise to pay to the order of THE GILA VALLEY BANK & TRUST COMPANY Nineteen Thousand Six Hundred Fifty and 95/100 Dollars, at its banking office in Globe, Arizona, with interest thereon at the rate of 8 per cent per annum from date until paid, interest payable on demand.

If default be made in the payment of interest when due, this note, principal and interest, shall

at once thereupon, [165] at the option of the holder, become due and payable without notice to or demand upon the makers, endorsers, guarantors, or any of them. If this note be placed in the hands of an attorney after maturity or default, for collection, then the makers and endorsers hereof agree to pay in addition to the principal and interest due hereon, an amount as attorney's fees equal to ten per cent of the principal and interest then due on this note. The makers and endorsers of this note severally waive presentment thereof for payment, protest and notice of nonpayment and of protest.

P. O. ———.

G. W. SHUTE.

J. J. MACKAY.

(Here follows ordinary bank form of pledge of security for payment of note of Certificate No. C.464 for 1000 shares Iron Cap Stock, signed

G. W. SHUTE.

J. J. MACKAY.)

(STAMP)

No. 28133.

In Evidence.

Plaintiff's Exhibit No. B.

Filed May 21, 1928.

Walter S. Wilson, Clerk.

By M. M. Hill, Deputy.

Uo. 5831. Globe, Arizona, February 9th, 1918.

\$20000.00.

On demand after date, for value received, I promise to pay to the order of THE GILA VALLEY BANK & TRUST COMPANY Twenty

Thousand and no/100 Dollars, at its banking office in Globe, Arizona, [166] with interest thereon at the rate of — per cent per annum from date until paid, interest payable on demand.

If default be made in the payment of interest when due, this note, principal and interest, shall at once thereupon, at the option of the holder, become due and payable without notice to or demand upon the makers, endorsers, guarantors, or any of them. If this note be placed in the hands of an attorney after maturity or default, for collection, then the makers and endorsers hereof agree to pay in addition to the principal and interest due hereon, an amount as attorney's fees equal to ten per cent of the principal and interest then due on this note. The makers and endorsers of this note severally waive presentment thereof for payment protest and notice of non-payment and of protest.

P. O. ———.

G. W. SHUTE.

J. J. MACKAY.

I have deposited with the above-named payee and pledged the same for the security of the payment of this note, the following: Certificates No. C319: C318: C317: C316: C315: C314: C313: C312: C311
100 shares each.

Iron Cap Copper Co.

Certificate #C464 issued in lieu of above.

(Here follows ordinary bank form of pledge of security for payment of note, signed.

G. W. SHUTE.

J. J. MACKAY.)

(Back)

(\$4.00 in U. S. Internal Revenue stamps affixed, with the following stamped on each stamp: "Gila Valley Bank & Trust Co. Feb. 16, 1918. Globe, Arizona.") [167]

It was thereupon stipulated by the attorneys that the trustee had been duly authorized by a meeting of creditors to appear in objection to the discharge.

Creditor's Exhibit No. 2 follows: [168]

CREDITOR'S EXHIBIT No. 2.

N. B.—"Debts" shall include any debt, demand or claim provable in bankruptcy. Sec. 1[11]

N. B.—"Creditor" shall include anyone who owns a demand or claim provable in bankruptcy and may include his duly authorized agent, attorney or proxy. Sec. 1[9.]

SCHEDULE A.

STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of All Creditors Who Are to be Paid in Full or to Whom Priority is Secured by Law.

CLAIMS WHICH HAVE PRIORITY

Amount

[1] Taxes and debts due and owing to the United States.

NONE

reference to Ledger or Voucher.— Names of Creditors. — Residence (if unknown, that fact to be stated.) Where and when contracted. — Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

Reference to Ledger or Voucher.— Names of Creditors. — Residence (if unknown, that fact to be stated.) Where and when contracted. — Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

Amount

[2.] Taxes due and owing to the state of Arizona or to any county, district or municipality thereof.

State and County taxes on property located in Globe, Gila County, Arizona more particularly described in Schedule B (1) on page 7 hereof. Said taxes being payable to the Treasurer, Gila County, Globe, Arizona, approx.

45 00

Reference to Ledger or Voucher.— Names of Creditors. — Residence (if unknown, that fact to be stated.) Where and when contracted. — Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[3.] Wages due workmen, clerks or servants to an amount not exceeding \$300.00 each, earned within three months before filing this petition.

NONE

Reference to Ledger or Voucher.— Names of Creditors. — Residence (if unknown, that fact to be stated.) Where and when contracted. — Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[4.] Other debts having priority by law.

NONE

Total

45 00

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [169]

SCHEDULE A. (2)

CREDITORS HOLDING SECURITIES.

(N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Acts of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

Reference to Ledger or Voucher.—Names of creditors. — Residence (if unknown, that fact must be stated). — Description of securities. When and where debts were contracted.—Value of securities.

Amount of Debts

NONE

Total.....

GEO. W. SHUTE,
Petitioner. [170]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SUGGESTION

(In filing this blank, be careful to strictly follow form which requires a statement as to "nature and consideration of debt; and whether any judgment," etc.)

SCHEDULE A. (3)

CREDITORS WHOSE CLAIMS ARE UN-SECURED.

(N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Reference to Ledger or Voucher.—Names of creditors.—Residence (if unknown, that fact must be stated).—When and where contracted. — Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.

Amount

J. J. Mackay, Care Alice Bird-	
sall, Fleming Building,	
Phoenix, Arizona	31,332 (

Total \$31,332 (

GEO. W. SHUTE,

Petitioner. [171]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE A. (4)

LIABILITIES ON NOTES OR BILLS DISCOUNTED WHICH OUGHT TO BE PAID BY THE DRAWERS, MAKERS, ACCEPTORS OR INDORSERS.

(N. B.—The dates of the notes or bills, and when due, with the names, residences and the business or occupation of the drawers, makers, acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher.— Names of holders so far as known.— Residence (if unknown, that fact must be stated).— Place where contracted. — Nature of liability, and whether same was contracted as partner or joint contractor or with any other person; and if so, with whom.	Amount
NONE	
(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.	Total..... GEO. W. SHUTE, Petitioner. [172]

(SCHEDULE A. 5.)

ACCOMMODATION PAPER.

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. State particulars as to other commercial paper.

Reference to Ledger or Voucher.—	Amount.
Names of holders.	
—Residence (if unknown, that fact must be stated).	
—Names and residences of persons accommodated.	
—Place where contracted — Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	NONE

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

Total.....
 GEO. W. SHUTE,
 Petitioner. [173]

OATH TO SCHEDULE A.

United States of America,
District of Arizona,—ss.

On this 17th day of April, A. D. 1928, before me personally came George W. Shute, the person mentioned in and who subscribed to the foregoing Schedule, and who being by me first duly sworn, did declare the said Schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

GEO. W. SHUTE.

Subscribed and sworn to, before me, this 17th day of April, 1928.

[Seal]

R. E. CONGER,
Notary Public.

My commission expires Jan. 15, 1931.

(This Oath to Follow Schedule A-5.) [174]

SCHEDULE B.

STATEMENT OF ALL PROPERTY OF BANKRUPT.

SCHEDULE B. (1).

REAL ESTATE.

Estimated Value

Location and description of all real estate owned by debtor, or held by him. Incumbrances thereon, if any, and dates thereof. Statement of particulars relating thereto.

All and singular that certain piece or parcel of land lying and being in Block No. 5 of Globe Townsite, and more particularly described as follows, to wit: Beginning at the Northwest corner of Block No. 5; running thence Easterly along the Northern boundary of said Block, 75 feet more or less to the Northeast corner of said Block; thence southerly along the Townsite line 98.9 feet more or less to the land sold to W. D. Fisk; thence westerly along the Northern line of said Fisk's land 75 feet more or less to the Western boundary line of said Block; thence Northern along said Western boundary of Block, 98.9 feet more or less to place of beginning, containing about 7417.5 feet or 2.34 lots.....\$250 00

Taxes due on this property as set forth in Schedule A (1) in the amount of approximately \$45.

Total.....\$250 00

GEO. W. SHUTE,
Petitioner. [175]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE B. (2).
PERSONAL PROPERTY.

Dollars Cents

A. Cash on hand.	NONE	
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).	NONE	
C. Stock in trade in business of at of the value of	NONE	
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:	Household, table and kitchen furniture, including furniture, rugs, carpets, wearing apparel, bedding and bedsteads, etc....	\$250 00
E. Books, prints and pictures, viz:	Hanging pictures and family library	25 00
F. Horses, cows, sheep and other animals (with number of each), viz:	NONE	
G. Carriages and other vehicles, viz:	NONE	

Dollars Cents

H. Farming stock and implements of husbandry, viz: NONE

I. Shipping and shares in vessels, viz: NONE

K. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz: NONE

L. Patent, copyrights and trade-marks, viz: NONE.

M. Goods or personal property of any other description, with the place where each is situated, viz: Law library including Cyc., Corpus Juris, Arizona Reports, Words and Phrases, Min. Reports to N. W., American Law Reports, Desk and filing case..\$750.00

GEO. W. SHUTE,
Petitioner. [176]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE B. (3).
CHOSSES IN ACTION.

Dollars Cents

A. Debts due petitioner on open account.

NONE

B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.

Greenback Mining Company,
Certs. No. 1552 to 1556 inclusive for 2500 shares of the par value of \$1.00..... no mkt.
Arizona Associated Mines Company, Cert. No. 10 for 1250 shares of the par value of 10¢. . no mkt.
California Carbon Company, Cert. No. 18 for 1 share of the par value of \$100. no mkt.

C. Policies of Insurance.

NONE

D. Unliquidated claims of every nature, with their estimated value.

NONE

E. Deposits of money in banking institutions and elsewhere.

Deposit First National Bank of
Arizona at Phoenix. \$15 67

Total

GEO. W. SHUTE,
Petitioner. [177]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE B. (4).

PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY, INCLUDING PROPERTY HELD IN TRUST FOR THE DEBTOR, OR SUBJECT TO ANY POWER OR RIGHT TO DISPOSE OF OR TO CHARGE.

(N. B.—A particular description of each interest must be entered. If all, or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as it is known to the debtor.)

General Interest.	Particular Description.	Supposed My Dollars	Value of Interest Cents
Interest in land.	NONE		
Personal Property.	NONE		
Property in money, stock, shares, bonds, annuities, etc.	NONE		
Rights and powers, legacies and be- quests.	NONE		
	Total.....		
Property heretofore conveyed for the benefit of creditors.	NONE		Amount realized from proceeds of property Conveyed

What portion of debtor's property has been conveyed by deed or assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.

Dollars Cents

NONE

What sum or sums have been paid to counsel and to whom, for services rendered or to be rendered in this bankruptcy.

Orme Lewis,	
Phoenix, Arizona	\$100 00
Total	\$100 00

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [178]

SCHEDULE B. (5).

A particular statement of the property claimed as exempted from the operation of the Acts of Congress relating to Bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description and present use.

Military uniform,
arms and equip-
ments.

Valuation
Dollars Cents

NONE

Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.

Household, table and kitchen furniture including furniture, rugs, carpets, wearing apparel, bedding and bedsteads, etc.	\$250 00
Hanging pictures and family library	25 00
Law library including Cyc., Corpus Juris, Arizona Reports, Words and Phrases, Minn. Reports to N. W., American Law Reports, Desk and filing case.	750 00
Revised Statutes of Arizona 1913, Civil Code, paragraph No. 3302, page 1113.	

N. B.—This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force

at the time of the filing of the petition in the State wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition.

Total.....\$1,025 00

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [179]

SCHEDULE No. B. (6).

BOOKS, PAPERS, DEEDS, AND WRITINGS
RELATING TO BANKRUPT'S BUSINESS
AND ESTATE.

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books. NONE

Deeds. NONE

Papers. NONE

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [180]

OATH TO SCHEDULE B.

United States of America,
District of Arizona,—ss.

On this 17th day of April, A. D. 1928, before me personally came George W. Shute, the person mentioned in and who subscribed to the foregoing Schedule and who being by me first duly sworn, did declare the said Schedule to be a statement of all his estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

GEO. W. SHUTE.

Subscribed and sworn to, before me, this 17th day of April, 1928.

[Seal]

R. E. CONGER,
Notary Public.

My commission expires Jan. 15, 1931. [181]

SUMMARY OF DEBTS AND ASSETS.

From the Statements of the Bankrupt in Schedules
A and B.

	Dollars.	Cents.
Schedule A. 1. (1) Taxes and debts due the United States.		
1. (2) Taxes due States, Counties, Districts and Municipalities.	45	00
1. (3) Wages		
1. (4) Other debts pre- ferred by law.....		

Schedule A.	2. Secured claims	
Schedule A.	3. Unsecured claims.....	31,332 01
Schedule A.	4. Notes and bills which ought to be paid by other parties thereto ..	
Schedule A.	5. Accommodation paper...	

Schedule A, Total...\$31,377 01

Schedule B.	1. Real Estate	250 00
Schedule B.	2. a. Cash on hand.....	
	2. b. Bills, promissory notes, and secur- ities	
	2. c. Stock in trade.....	
	2. d. Household goods, etc..	250 00
	2. e. Books, prints and pic- tures	25 00
	2. f. Horses, cows and other animals	
	2. g. Carriages and other vehicles	
	2. h. Farming stock and im- plements	
	2. i. Shipping and shares in vessels	
	2. k. Machinery, tools, etc...	
	2. l. Patents, copyrights and trade-marks ..	
	2. m. Other personal prop- erty	750 00

Schedule B.	3. a. Debts due on open accounts	
	3. b. Stocks, negotiable bonds, etc.	
	3. c. Policies of insurance..	
	3. d. Unliquidated claims..	
	3. e. Deposits of money in banks and elsewhere....	15 67
Schedule B.	4. Property in reversion, remainder, trust, etc...	
Schedule B.	5. Property claimed to be exempt\$1,025.00	
Schedule B.	6. Books, deeds and papers.	

Schedule B, Total..... \$1290 67

(N. B.—This summary Blank must be filled out and properly footed.)

GEO. W. SHUTE,
Petitioner. [182]

Creditor's Exhibit No. 2 is marked "Filed in the United States District Court for the District of Arizona on April 17, 1928, and filed April 18, 1928, by R. W. Smith, Referee."

Thereupon referee's order directing bankrupt to file amended schedule was admitted in evidence and read into the record as follows:

(Omitting title of court and cause and endorsements.)

"Upon motion of Alice M. Birdsall, attorney for J. J. Mackay, a creditor of said estate, that said bankrupt be required and ordered to amend his

schedules theretofore filed in said matter, upon the ground that the testimony of said bankrupt, given under examination by said attorney, disclosed that said schedules were incorrect and untrue.

IT IS ORDERED by the referee that said bankrupt be and he is hereby required to file new schedules or to so amend said schedules theretofore filed by him to conform to the facts and the provisions of the bankrupt act.

Dated this 1st day of May, 1928.

R. W. SMITH,
Referee in Bankruptcy."

Creditor's Exhibit No. 3 was then admitted in evidence, as follows: [183]

CREDITOR'S EXHIBIT No. 3.

F. B.—“Debts” shall include any debt, demand or claim provable in bankruptcy. Sec. 1 [11]

N. B.—“Creditor” shall include anyone who owns a demand or claim provable in bankruptcy and may include his duly authorized agent, attorney or proxy. Sec. 1 [9.]

AMENDED SCHEDULE A.

B-486—Pret.

STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of All Creditors Who are to be Paid in Full or to Whom Priority is Secured by Law.

CLAIMS WHICH HAVE PRIORITY

Amount

Reference to Ledger or Voucher.— Names of Creditors. — Residence (if unknown, that fact to be stated.) Where and when contracted. — Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[1.] Taxes and debts due and owing to the United States.

NONE

Reference to Ledger or Voucher.— Names of Creditors. — Residence (if unknown, that fact to be stated.) Where and when contracted. — Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.

[2.] Taxes due and owing to the state of Arizona or to any county, district or municipality thereof.

State and County taxes on property located in Globe, Gila County, Arizona, more particularly described in Schedule B. (1) on page 7 hereof. Said taxes being payable to the Treasurer, Gila County, Globe Arizona,

approx.\$45 00

Reference to Ledger or Voucher. — Names of Creditors. — Residence (if unknown, that fact to be stated). Where and when contracted. — Nature and consideration of the debt, and whether contracted as a partner or joint contractor; and if so, with whom.	Amount
<p>[3.] Wages due workmen, clerks or servants to an amount not exceeding \$300.00 each, earned within three months before filing this petition.</p>	<p>NONE</p>
<p>[4.] Other debts having priority by law.</p>	<p>NONE</p>
	<p>Total.....\$45 00</p>

GEO. W. SHUTE,
Petitioner. [184]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

SCHEDULE A. (2)

CREDITORS HOLDING SECURITIES.

(N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Acts of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

Reference to Ledger or Voucher.— Names of creditors.—Residence (if unknown, that fact must be stated.)— Description of securities.—When and where debts were contracted.— Value of securities.	Amount of Debts
Promissory note payable to the First National Bank of Arizona at Phoenix, dated April 7, 1928, interest 8%, payable 90 days after date and secured by a chattel mortgage on a Hudson automobile subject to a conditional sales contract with A. E. England, 424 North Central Avenue, Phoenix, Arizona, in whose possession said security may be found. Said debt being contracted at Phoenix, Arizona, by your petitioner herein.	Value of said security\$750 00 Total.....\$750 00

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
 Petitioner. [185]

SUGGESTION

(In filing this blank, be careful to strictly follow form which requires a statement as to "nature and consideration of debt; and whether any judgment," etc.)

SCHEDULE A. (3)

CREDITORS WHOSE CLAIMS ARE UNSECURED.

(N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Reference to Ledger or Voucher.—	Amount
Names of creditors.—Residence (if unknown, that fact must be stated).—When and where contracted.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and if so, with whom.	J. J. Mackay, \$31,332 01
County of Maricopa, State of Arizona. Care Alice Birdsall, Fleming Building, Phoenix, Arizona.	
The nature and consideration of said indebtedness is as follows: Promissory note dated Globe, Arizona, February 9, 1918, for \$20,000, payable to the Gila Valley Bank & Trust Company and signed by G. W. Shute as principal and J. J. Mackay as surety and upon which the said J. J. Mackay paid interest in the amount of	

Amount

\$3,706.34 between the 30th day of December, 1918 and the 30th day of December, 1920.

Renewal note dated Globe, Arizona, December 30, 1920, for \$19,650.95 payable to the Gila Valley Bank & Trust Company and signed by G. W. Shute as principal and J. J. Mackay as surety and upon which the said J. J. Mackay paid interest in the amount of \$786.

Renewal note dated Globe, Arizona, January 2, 1921, for \$19,978.70 payable to the Gila Valley Bank & Trust Company and signed by G. W. Shute as principal and J. J. Mackay as surety and upon which the said J. J. Mackay paid principal and interest in the amount of \$26,839.67 between the 13th day of December, 1922, and the 16th day of June, 1927.

Total.....\$31,332 01

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [186]

SCHEDULE A. (4)

LIABILITIES ON NOTES OR BILLS DISCOUNTED WHICH OUGHT TO BE PAID BY THE DRAWERS, MAKERS, ACCEPTORS OR INDORSERS.

(N. B.—The dates of the notes or bills, and when due, with the names, residences and the business or occupation of the drawers, makers, acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher. — Names of holders so far as known. — Residence (if unknown, that fact must be stated). — Place where contracted. — Nature of liability, and whether same was contracted as partner or joint contractor or with any other person; and if so, with whom.	Amount
NONE	
Total.....	

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [187]

(SCHEDULE A. 5)

ACCOMMODATION PAPER.

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. State particulars as to other commercial paper.)

Reference to Ledger or Voucher. — Names of holders. —Residence (if unknown, that fact must be stated).— Names and residences of persons accommodated. — Place where contracted. — Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.	Amount
NONE	

Total.....

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [188]

OATH TO SCHEDULE A.

United States of America,
District of Arizona,—ss.

On the 7th day of May, A. D. 1928, before me personally came George W. Shute, the person mentioned in and who subscribed to the foregoing Schedule, and who being by me first duly sworn, did declare the said Schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

GEO. W. SHUTE,

Subscribed and sworn to, before me, this 7th day of May, 1928.

[Seal]

R. E. CONGER,
Notary Public.

My commission expires Jan. 15, 1931.

(This oath to follow Schedule A.-5.) [189]

SCHEDULE B.
 STATEMENT OF ALL PROPERTY OF
 BANKRUPT.

SCHEDULE B. (1)

REAL ESTATE.

Location and description of all real estate owned by debtor, or held by him. Incumbrances thereon, if any, and dates thereof. Statement of particulars relating thereto.

ESTIMATED
 VALUE.

<p>All and singular that certain piece or parcel of land lying and being in Block No. 5 of Globe Townsite, and more particularly described as follows, to wit: Beginning at the North west corner of Block No. 5; running thence Easterly along Northern boundary of said Block, 75 feet more or less to the Northeast corner of said Block; thence southerly along the Townsite line 98.9 feet more or less to the land sold to W. D. Fisk; thence westerly along the Northern line of said Fisk's land 75 feet more or less to the Westerly boundary line of said Block; thence Northern along said Western boundary of Block, 98.9 feet more or less to place of beginning, containing about 7417.5 feet or 2.34 lots</p>	<p>\$250 00</p>
--	-----------------

Estimated
Value.

Incumbrances :

Taxes due on this property as set forth in Schedule A (1) in the amount of approximately \$45.

Total.....\$250 00

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [190]

SCHEDULE B. (2)

PERSONAL PROPERTY.

	Dollars	Cents
A. Cash on hand.	NONE	
B. Bills of exchange, promissory notes, or securities of any description (each to be set out separately).	NONE	
C. Stock in trade in business of at of the value of	NONE	
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:	Household, table and kitchen furniture, including furniture, rugs, carpets, wearing apparel, bedding and bedsteads etc.	\$250 00
E. Books, prints and pictures, viz:	Hanging pictures and family library	25 00
F. Horses, cows, sheep and other animals (with number of each), viz:	NONE.	

		Dollars	Cents
G. Carriages and other vehicles, viz:	NONE		
H. Farming stock and implements of husbandry, viz:	NONE		
I. Shipping and shares in vessels, viz:	NONE		
K. Machinery, fixtures, apparatus and tools used in business with the place where each is situated, viz:	NONE		
L. Patent, copyrights and trade-marks, viz:	NONE		
M. Goods or personal property of any other description, with the place where each is situated, viz:	Law library of Cyc, Corpus Juris, Arizona Reports, Words & Phrases, Minn. Reports to N. W., American Law Reports, Desk and file case	\$750	00
	20% interest in office equipment of Armstrong, Lewis & Kra- mer, F. N. B. A. Bldg., Phoe- nix, Ariz.		769 15

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
 Petitioner. [191]

SCHEDULE B. (3)
 CHOSSES IN ACTION.

Dollars Cents

A. Debts due petitioner on open account.	25% interest in the net earnings of Armstrong, Lewis & Kramer made and earned as shown on the books of said firm from the 1st day of April, 1927, subject to the agreement as of that date. The value of this interest is determinable only as the accounts so made and earned are collected.	
B. Stock in incorporated companies, interest in joint stock companies, and negotiable bonds.	Greenback Mining Company Certs. No. 1552 to 1556 inclusive for 2500 shares of the par value of \$1.	No mkt.
	Arizona Associated Mines Company Cert. No. 10 for 1250 shares of the par value of 10¢	No mkt.
	California Carbon Company Cert. No. 18 for 1 share of the par value of \$1	No mkt.
	New Dominion Copper Co. Cert. No. 2408 for 744 shares of the par value of \$1	No mkt.
C. Policies of Insurance.		NONE
D. Unliquidated claims of every nature, with their estimated value.		NONE

	Dollars	Cents
E. Deposits of money in banking institutions and elsewhere.	Deposit First National Bank of Arizona at Phoenix	\$ 15 67
	Total.....	\$ 15 67

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [192]

SCHEDULE B. (4)

PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY, INCLUDING PROPERTY HELD IN TRUST FOR THE DEBTOR, OR SUBJECT TO ANY POWER OR RIGHT TO DISPOSE OF OR TO CHARGE.

(N. B.—A particular description of each interest must be entered. If all, or any of the debtor's property has been conveyed by deed or assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as it is known to the debtor.)

General Interest.	Particular Description	Supposed Value of My Interest	
		Dollars	Cents
Interest in land.	NONE		
Personal Property.	NONE		
Property in money, stocks, shares, bonds, annuities, etc.	NONE		
Rights and powers, legacies and bequests.	NONE		
	Total.....		

Property heretofore conveyed for the benefit of creditors.	NONE	Dollars Cents Amount realized from proceeds of property Conveyed
--	------	---

What portion of debtor's property has been conveyed by deed or assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.	NONE
---	------

What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.	Orme Lewis Phoenix, Arizona	\$100 00
--	--------------------------------------	----------

Total.....\$100 00

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [193]

SCHEDULE B. (5)

A particular statement of the property claimed as exempted from the operation of the Act of Congress relating to Bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description and present use.

Military uniform, arms and equipments.	NONE.	Valuation Dollars Cents
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Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to	Household, table and kitchen furniture including furniture, rugs, carpets, wearing apparel, bedding and
---	---

the statute of the State creating the exemption.

Dollars Cents

bedsteads, etc.	\$ 250 00
Hanging pictures and family library	25 00
Law library of Cyc, Corpus Juris, Arizona Reports, Words and Phrases, Minn. Reports to N. W., American Law Reports, Desk and file case	750 00

20% interest in office equipment of Armstrong, Lewis & Kramer, F. N. B. A. Bldg., Phoenix, Arizona	769 15
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N. B.—This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition.

The above being the professional library and necessary office furniture of your petitioner.

Revised Statutes of Arizona, 1913 Civil Code, paragraph No. 3302, page 1113.

Total..... \$1,794 15

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

GEO. W. SHUTE,
Petitioner. [194]

SCHEDULE No. B. (6)

BOOKS, PAPERS, DEEDS, AND WRITINGS
RELATING TO BANKRUPT'S BUSI-
NESS AND ESTATE.

The following is a true list of all books, papers, deeds and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books. NONE

Deeds. NONE

Papers. Books of income, showing income in full are kept by the firm of Armstrong, Lewis & Kramer, a partnership, and are in the possession of said partnership. Books of the First National Bank of Arizona show deposits. My cancelled checks, together with stubs, will show expenditures, and partnership agreements will show relation to the partnership.

GEO. W. SHUTE,
Petitioner. [195]

(Full sets of schedule blanks must be filed. If there are no items applicable to any particular blanks, such fact should be stated in said blank. Each schedule sheet must be signed.)—Rule 14.

OATH TO SCHEDULE B.

United States of America,
District of Arizona,—ss.

On this 7th day of May, A. D. 1928, before me personally came George W. Shute, the person mentioned in and who subscribed to the foregoing Schedule and who being by me first duly sworn, did declare the said Schedule to be a statement of all his estate, both real and personal, in accordance with the Acts of Congress relating to Bankruptcy.

GEO. W. SHUTE.

Subscribed and sworn to before me, this 7th day of May, 1928.

[Seal]

R. E. CONGER,
Notary Public.

My Commission expires Jan. 15, 1931. [196]

SUMMARY OF DEBTS AND ASSETS.

From the Statements of the Bankrupt in Schedules
A and B.

		Dollars	Cents
Schedule A.	1. (1) Taxes and debts due the United States		
	1. (2) Taxes due States, Counties, Dis- tricts and Muni- cipalities	\$	45 00
	1. (3) Wages		
	1. (4) Other debts pre- ferred by law...		
Schedule A.	2. Secured claims	750	00
Schedule A.	3. Unsecured claims	31,332	01
Schedule A.	4. Notes and bills which ought to be paid by other parties thereto		
Schedule A.	5. Accommodation paper Schedule A, Total...	\$32,127	01
Schedule B.	1. Real Estate	\$	250 00
Schedule B.	2. a. Cash on hand.....		
	2. b. Bills, promissory notes, and securi- ties		
	2. c. Stock in trade		
	2. d. Household goods, etc.	250	00
	2. e. Books, prints and pictures		25 00
	2. f. Horses, cows and other animals.....		

	Dollars	Cents
2. g. Carriages and other vehicles		
2. h. Farming stock and implements		
2. i. Shipping and shares in vessels		
2. k. Machinery, tools, etc.		
2. l. Patents, copyrights and trade-marks ..		
2. m. Other personal property	750	00
Schedule B. 3. a. Debts due on open accounts		
3. b. Stocks, negotiable bonds, etc.		
3. c. Policies of insurance		
3. d. Unliquidated claims		
3. e. Deposits of money in banks and elsewhere	15	67
Schedule B. 4. Property in reversion, remainder, trust, etc.		
Schedule B. 5. Property claimed to be exempt ... \$1,794.15		
Schedule B. 6. Books, deeds and papers		

Schedule B, Total.. \$ 2,059 82

GEO. W. SHUTE,

Petitioner. [197]

(N. B.—This summary Blank must be filed out and properly footed.)

(Testimony of Otis E. Rogers, Jr.)

Creditor's Exhibit No. 3 is endorsed "Filed May 8, 1928, in the office of the Clerk of the District Court of the United States in and for the District of Arizona."

TESTIMONY OF OTIS E. ROKERS, Jr.

(Examination by Mr. NEALON.)

My name is Otis E. Rogers, Jr. I am chief deputy of the County Recorder's Office. I have in my possession a conditional sales contract between A. E. England Motor Company and George W. Shute or G. W. Shute. Date of record is November 26, 1927. This instrument is duly recorded in our office.

Whereupon conditional sales contract referred to was admitted in evidence as Creditor's Exhibit No. 4, the same being conditional contract of sale entered into in quadruplicate November 25, 1927, between A. E. England Motors, Inc., referred to as the seller, and G. W. Shute of Phoenix, Arizona, referred to as the purchaser, the same covering property described as 1928 Hudson super-six std. sedan, motor No. 495579, Serial No. 799342, payment of \$1500.00 being due thereunder on the 25th day of November, 1928, and being the only payment listed under schedule of payments. Said instrument is signed by A. E. England Motors, Inc., by E. A. Wedepohl, title Secretary, and by G. W. Shute as purchaser. It is endorsed "Filed and

(Testimony of Otis E. Rogers, Jr.)

recorded at the request of A. E. England Motors, Inc., on Nov. 26, 1927.”

Thereupon chattel mortgage was produced by witness and admitted in evidence as Creditor's Exhibit No. 5, being a [198] chattel mortgage executed by G. W. Shute as mortgagor to the First National Bank of Arizona at Phoenix as mortgagee for the sum of \$750.00 and covering the following described personal property with the following recitation therein “One Hudson std. sedan, engine No. 495579, Serial No. 799342, model No. 1928, registration No. 101759, all of which property is hereby warranted to be the property of the said mortgagor in his possession and free from all prior liens, claims and incumbrances whatsoever.” Said mortgage contains usual clauses and recites it is given to secure one promissory note executed by G. W. Shute, the mortgagor, payable to the First National Bank of Arizona at Phoenix, the mortgagee, for the sum of \$750.00, dated April 7, 1928, due July 7, 1928, with interest at 8% per annum from date until paid. Recites if bankruptcy proceedings be instituted by or against the mortgagor, or if the mortgaged property be sold by the mortgagor without the written consent of the mortgagee, then the whole sum secured with interest shall become immediately due and payable at the option of the mortgagee, and that as long as the conditions of the mortgage are fulfilled the mortgagor is to remain in peaceful possession of the property, and in consideration thereof agrees to keep

said property in as good condition as it now is. Said mortgage is dated April 7, 1928, and is signed and acknowledged by G. W. Shute. An affidavit of *bona fides* is made by G. W. Shute as mortgagor and by Sylvan Ganz as vice president of the mortgagee and sworn to by G. W. Shute and Sylvan Ganz before R. E. Conger, notary public, on April 9, 1928. It is endorsed "Recorded at the request of First National Bank of Arizona April 9, 1928."

It was stipulated by counsel for bankrupt that neither of said Exhibits 3 and 4 was released of record.

Thereupon Creditor's Exhibit No. 6 was admitted in evidence as follows: [199]

CREDITOR'S EXHIBIT No. 6.

"Phoenix, Arizona, Nov. 25, 1927, No. 528.

FIRST NATIONAL BANK OF ARIZONA, 91-1.

Phoenix, Arizona.

Pay to the order of A. E. England \$250.00
Two Hundred Fifty no/100 Dollars.

G. W. SHUTE.

(End)

G. W. SHUTE

(Back)

Pay to the Order of
The National Bank of Arizona
Phoenix, Arizona
A. E. ENGLAND."

(Testimony of E. A. Wadepohl.)

“(Round Rubber Stamp)”

THE NATIONAL BANK OF
ARIZONA

1

NOV. 26, 1927.

§

(Perforated) [200]

TESTIMONY OF E. A. WEDEPOHL, FOR
TRUSTEE.

(Given Before the Referee in Bankruptcy on May
29, 1928)

(Examination by Mr. NEALON.)

I brought with me the ledger account of G. W. Shute with A. E. England Motors, incorporated.

(Whereupon it was stipulated by counsel that a true copy of such ledger account was attached to the testimony of the witness taken before the referee and that all of such testimony [201] of witness taken before the referee with exhibits attached should be admitted in evidence, the same being as follows:)

We do not keep other deposit slips showing by whom paid. Our deposits show exactly like this (writing with pencil). The entry on folio 281 of December 13th is just an invoice. When a car comes in it is credited to Stock Account. When it is sold we bill the car on the invoice and charge Accounts Receivable and credit Stock Account. When the car comes into our possession prior to that date we charge the stock account when it comes

(Testimony of E. A. Wedepohl.)

in and credit cash. When the car is sold we credit Stock Account and charge Accounts Receivable or Cash as the case may be. In the transaction like this one on December 11th, showing payment of \$400, we did not take any other evidence of indebtedness than our charge account for V. A. Wentworth. It is our custom to do so just with established customers. The description of this Hudson car is a four-door Hudson sedan, 1928 model, although it was built in 1927. This ledger sheet I have submitted from our ledger bears no year date. It is 1927, and the January entry is 1928. I know no more about this transaction than is given here. The car was selected by Miss Wentworth. I know the individual who paid the \$400. It was paid either by check or draft. Ordinarily, it would be deposited on the day received unless it was paid at four or five o'clock in the afternoon. We made daily deposits. I turn to our cash-book, folio 74, and read into the record the entry of September 14th, 1926, "G. W. Shute." It appears on our book "\$100.00." In explanation of that, "Cash credit." There wouldn't be any explanation in our records. It was intended that Mr. Shute's account should be credited. That is a credit, and looking at the ledger account it shows that no charge had been made to Mr. Shute up to that time. After looking at that record, I cannot tell anything more about the \$100 than other little items that are going through. It is our practice to [202] charge our supplies on another book and post the entries on

(Testimony of E. A. Wedepohl.)

the tenth. On having my attention called to the first charge to the account of G. W. Shute on September 30, 1926, "transferring contract," which is \$6.25, my explanation of that is that it is part of the fee we paid to get transfer of the contract paid for Mr. Shute and charged to his account. The date is September 30th here. That is not the date of the actual payment of the money. We carry these little items in petty cash account and when we get \$40 or \$50 together we make a charge. Turning to entry of September 30th, folio 5073, that is an invoice. I haven't those with me.

Q. I will call your attention to your entry "C. I. T. payments (3) on September 30," 190 "5."

Mr. ENGLAND.—That was the three payments in arrears. Judge Shute took up that contract and he paid that; it was \$61.08 a payment.

Mr. WEDEPOHL resumes: Turning to folio 77, September 18th, that entry reads September 18th, Cash \$12.60. I have no explanation. Folio 126, January 22, 1927, reads \$19.70. Folio 130, G. W. Shute, \$16.50. Turning to journal the item of April 30th, \$126.70, folio 121, is a transfer from one account and putting it in another. It was taken from this one and put into this one (indicating). Explaining why we have two accounts covering the same period of time as to Judge Shute, I will say we had one account under the head of "Retail Sales" and the other under "Parts." This \$126.70 was transferred to the regular account, and then we closed that other account.

(Testimony of E. A. Wedepohl.)

Reading entry, folio 224, November 30th, \$100, G. W. Shute, my explanation is that \$100.00 was credited to account. It does not show for what purpose it was paid. Turning to cash-book, folio 10, February 28, 1928, that shows credit \$200.00. On February 27th, top of the same [203] page, folio 10, our check No. 3390, \$200.00, charged to his account. I don't recall what that was. I would not say that we gave him check for \$200 which he paid us back on the 28th. I would like to look at the check. The book indicates that we gave him check No. 3390 for \$200, and that he gave us \$200 on the 28th. All our books show is that we paid him \$200 the day before we received it from him. Turning to page 151, account of G. W. Shute, and looking at the entry of April 11, 1927, folio 151, \$436.87, that check was payable to C. I. T. Corporation to pay on contract. I mean by that we gave our check and charged it to this account. The pencil memorandum on this ledger sheet "Pay off old Hudson" is the explanation I refer to. On page 161 there is a charge of \$1775.00, Hudson five-passenger std sedan. That is the invoice. I haven't that. That is the retail price of that car. Turning to folio 151, April 4, 1927, credit to G. W. Shute \$700.00, I have no explanation of that. It was apparently received from him on that date. Turning to journal 121 and reading into the record, entry of April 30th, \$404.47, that is a charge to Discounts and credit to G. W. Shute's account. Explaining that transaction, it was an allowance on

(Testimony of E. A. Wedepohl.)

the price of the five-passenger sedan so that we actually realized \$1,775.54 less \$404.47. Turning back to cash-book, page 169, that is credit of \$2,000.00 to the account of G. W. Shute. It is a receipt by us from Judge Shute of \$2,000, and was in 1927. Turning to cash-book, page 171, June 6, 1927, that shows our check No. 2207 issued in favor of Mr. Shute for \$765.90. The books show that check was delivered to him at that time. Referring to our journal entry of July 30th, page 149, of \$335.00, that is a charge to Judge Shute's credit, to used car purchase. That was an entry that the bookkeeper made. It was just a cross entry. Referring to entry of August 31, 1927, Essex No. 640003, \$995.00, that is an invoice for the car. We have no entry for that. It indicates sale of an Essex car to Judge Shute on [204] August 31st. Referring to entry dated November 30, 1927, folio 276, that is an invoice for \$1535.00. Referring to entry on May 18th, Essex sedan, \$1060.00, that is an invoice. Referring to journal, page 161, entry of \$156.47, that is a discount allowance on the Essex car on the same day. Referring to cash-book, folio 197, September 6th, credit to Judge Shute of \$250.00, that was cash \$250 applied just on his account. The entry of October 6th, folio 207, credit of \$100, is just a credit to his account. The entry of October 6th, folio 207, credit \$1185.00, is a cash credit to his account. The same folio, October 7th, \$100.00, is a cash credit. The entry, November 26th—these are all in 1927—at page 223, credit of

(Testimony of E. A. Wedepohl.)

\$250.00, was a cash credit to his account. The journal, folio 23, credit of \$400, is for used car taken as a credit on the last Essex car. On the same page a credit of \$660.00 is a contract taken on the same car. That is a contract on the last car on which the purchase price was \$1060.00. That note has not been paid. It is in possession of our company. There are no credits on it. I am the secretary of this company.

The witness further testified before the Court as follows:

(Examination by Mr. NEALON.)

I don't think I know about this Hudson car of Judge Shute having been in the business place of the England Motors Company prior to April 17, 1928, and subsequent thereto. I don't know whether it was in there or not. I don't know who would have that information. I have no record of any storage of that car at that place. We keep a record of the sales of cars sold by us when they are turned back. Referring to Hudson car motor No. 495579, serial No. 799342, it was not turned back that I know of upon any sales contract to the A. E. England Motors Company. It was resold but it was not turned back that I know of. (Examining [205] document.) We never had anything to do with the resale of that one. I am familiar with the salesroom of our establishment. I have never seen this car on the sales floor. I think I would have seen it if it had been there. I

have not the account of the car sold to Virginia L. Wentworth. [206]

CREDITOR'S EXHIBIT No. —.

Sheet No. —.

Rating Credit limit Name—V. L. Wentworth
Business Address—Globe, Arizona.
Account No. —

Date.	Items.	Fol.	Debits.
1927.			

Dec. 13	Hudson		
	Serial 11306	281	1395 00
		(Pencil)	1395 00

Date.	Items.	Fol.	Credits.
Dec. 11	Cash	227	400 00
Jan. 3	Cash	1	995 00
		(Pencil)	1395 00

This is a copy of original ledger sheet.

A. E. ENGLAND MOTORS, INC.
E. A. WEDEPOHL,
Secretary.

Sheet No. —.

Rating. Credit limit. Name—G. W. Shute,
Business. Address—Phoenix, Arizona.
Account No. —.

Date.	Items.	Fol.	Debits.
1927.			

Apr. 11.	Pay off old Hudson	151	436 87
Apr. 15.	Hudson 5—Pass. [207]		

(Date.) (Apr.)	(Items.)	(Fol.)	(Debits.)
	std. Sedan		
	Serial 770273		
	Motor 459077	161	1775 00
Apr. 30.	J-Trf to close old acct.	J121	126 70
June 6.	Cash (Refund)	171	765 90
July 30.	J. Dup of 7/6/27	149	335 00
Aug. 31.	Essex Coach Ser. 640003	234	995 00
	Motor		
Oct. 29.	Title	215	1 00
Nov. 30.	Hudson Sedan Serial 799342		
	Motor 495579	276	1535 00
1928			
May 18.	Essex Sedan (Pencil) \$14.53	417 (Pencil)	1060 00 7030 47
Date.	Items.	Fol.	Credits.
1927.			
Apr. 4.	Cash	151	700 00
30.	J	121	404 47
June 7.	Cash	169	2000 00
July 6.	Used Car	143	335 00
6.	Note	143	90 00
18.	Cash	178	50 00
18.	Cash	178	335 00
Aug. 31.	J	161	156 47
Sept. 6.	Cash	197	250 00
Oct. 6.	Cash	207	100 00

(Date.)	(Items.)	(Fol.)	(Credits.)
(Oct.) 6.	(Cash)	207	1185 00
(Oct.) 7.	(Cash)	207	100 00
Nov. 26.	(Cash)	223	250 00
1928.			
May 17.	Used Car	23	400 00
May 17.	Notes	23	660 00
		(Pencil)	7015 94

This is a copy of original ledger sheet.

A. E. ENGLAND MOTORS, INC.

E. A. WEDEPOHL,

Secretary.

Sheet No. —.

Rating Credit Limit.

Name—G. W. Shute.

Business. Address—Phoenix, Arizona.

Date.	Items.	Fol.	Debits.
1926.			
Sept. 30.	Trf. of Contract	80	6 25
Sept. 30.	Tire tube cas & title	5073	43 00
Sept. 30.	C. I. T. Payts (3)		190 05
Sept. 31.	Prestolite Battery	6108	19 70
1927.			
Feb. 10.	Battery	6367	16 50
July 27.	Pts (?)	1375	49 70
Nov. 30.	Tires	2537	50 40
Nov. 30.	Tires	3218	50 40
Nov. 30.	Cash	226	49 60
1928.			
Feb. 13.	Paint Oldsmobile	7614	25 00

242 *Thomas W. Nealon and J. J. Mackay*

(Date.)	(Items.)	(Fol.)	(Debits.)
Feb. 24.	Tires	7655	
Feb. 27.	Cash	10	2000 00
Mar. 1.	Pts.	4821	41 50
Mar. 12.	Battery	7679	6 50
Mar. 12.	Repaint Rdds (?)	7681	25 00
	(Pencil) \$100.10	(Pencil)	824 00
Date.	Items.	Fol.	Credits.
1926.			
Sept. 14.	Cash	674	100 00
Sept. 18.	Cash	677	12 60
1927			
Jan. 22.	Cash	126	19 70
Feb. 25.	Cash	137	16 50
Apr. 30.	Cash	121	126 70
Nov. 30.	Cash	224	100 00
Nov. 30.	Cash	226	49 66
Nov. 30.	J	189	50 40
1928.			
Feb. 23.	Cash	9	25 00
Feb. 28.	Cash	10	200 00
Mar. 16.	Cash	12	31 50
Mar. 16.	Cash	12	41 50
		(Pencil)	723 90

This is a copy of original ledger sheet.

A. E. ENGLAND MOTORS, INC.

E. A. WEDEPOHL,

Secretary. [210]

(Testimony of E. A. Wedepohl.)

It was thereupon stipulated between counsel that the original ledger sheet referred to by Mr. Wedepohl was in the record and was admitted in evidence. Witness thereupon produced a doctor's certificate that Mr. A. E. England was confined to the hospital and unable to appear, said doctor's certificate being then admitted in evidence.

It was thereupon stipulated by and between counsel that there was a petition for sale of the car of G. W. Shute by the trustee, an order thereon and a bill of sale made to G. W. Shute in the sum of \$900.00 subsequent to the bankruptcy proceedings.

It was further stipulated that a petition was filed with the Referee for release of the policy of insurance, and that a receipt was given by Judge Shute for the policy itself in order that he might avail himself of his rights under the policy.

TESTIMONY OF SYLVAN C. GANZ, FOR
CREDITOR AND TRUSTEE.

(Called as a Witness by Creditor and Trustee.)

[211]

It was then stipulated by counsel that the testimony of Mr. Ganz with all exhibits attached thereto, given before the referee in bankruptcy, might be admitted in evidence and considered as taken at this hearing, and that the witness at this time would only be interrogated regarding new matters.

(Examination by Mr. NEALON.)

I have with me the savings account of Jessie M. Shute, and reading into the record therefrom there

(Testimony of Sylvan C. Ganz.)

is an entry on this account dated June 23, 1928, of a withdrawal of \$1000, leaving a balance in the account at that time of \$262.30. I also have the deposit account of George W. Shute in said bank, and reading therefrom there was a deposit in said account on July 12, 1928, of \$1000. I have not the deposit slip on that. I have with me a \$3400 deposit slip asked for in the subpoena.

Thereupon it was stipulated by counsel for the bankrupt that on September 17, 1928, G. W. Shute deposited in the First National Bank of Arizona \$3400 in currency, and it was further stipulated that on December 31, 1927, Judge Shute cashed at the First National Bank of Arizona a check drawn by Wesley Goswick on the Valley Bank at Globe for \$2000 and deposited \$1900 of the money and retained \$100 which he put in his pocket. It was further admitted by the counsel for bankrupt that Judge Shute would from time to time, whenever he was able to, deposit from his earnings money into Mrs. Shute's savings account, so the savings account will show the total amount put in there, and in fact all of it came from Judge Shute's personal earnings except rent from the house at Globe.

Thereupon it was stipulated by counsel for bankrupt that the following five checks signed by G. W. Shute were all deposited to Mrs. Shute's savings account by Judge Shute and might be admitted in evidence as one exhibit, being Creditor's Exhibit No. 8, as follows: [212]

CREDITOR'S EXHIBIT No. 8.

“Phoenix, Arizona, June 24, 1927.

FIRST NATIONAL BANK OF ARIZONA, 91-1.

Pay to Yourselves.....or bearer \$500.00
Five Hundredno/100.....Dollars

G. W. SHUTE.

(Back)

(Rubber Stamp.)

The National Bank

5

Jun 24 1927

of Arizona

(Perforated)”

“Phoenix, Arizona, Aug. 22 1927

THE NATIONAL BANK OF ARIZONA, 91-1.

Pay to Yourselves.....or bearer \$50.00
Fiftyno/100..... Dollars

G. W. SHUTE.

(Perforated)

(Rubber Stamp)

The National Bank

5

Aug 22 1927

of Arizona”

“Phoenix, Arizona, Sept. 2, 1927. No. 480.

FIRST NATIONAL BANK OF ARIZONA, 91-1,

Phoenix, Arizona.

Pay to the order of Cash.....\$100.00
One Hundred.....no/100.....Dollars

G. W. SHUTE.

(Across the End)
G. W. Shute
(Rubber Stamp)
First National Bank
Sep 2 1927
of Arizona
(Perforated)'' [213]

“Phoenix, Arizona, Nov. 17, 1927.
FIRST NATIONAL BANK OF ARIZONA, 91-1.
Pay to Yourselves.....or bearer \$100.00
One hundred.....no/100.....Dollars
G. W. SHUTE.

(Back)
G. W. Shute
(Perforated)
(Rubber Stamp)
The National Bank
5
Nov 17 1927
of Arizona''

“Phoenix, Arizona, Jan. 4, 1928.
FIRST NATIONAL BANK OF ARIZONA, 91-1.
Pay to Yourselves.....or bearer \$500.
Five Hundred.....no/100.....Dollars
G. W. SHUTE.

(Back)
(Perforated)
(Rubber Stamp)
The National Bank
5
Jan 4 1928
of Arizona'' [214]

(Testimony of Mrs. Sylvan C. Ganz.)

The transcript of testimony of Mrs. SYLVAN GANZ, given before the referee in bankruptcy on June 15, 1928, is as follows:

(Examination by the TRUSTEE.)

My name is Sylvan Ganz. I am vice-president of the First National Bank of Arizona and have been of its predecessor in interest for a number of years, and prior to that time I was in the bank in some executive capacity. I have with me the account of George W. Shute showing loans and discounts made to him.

(Witness hands document to referee.)

This account of George W. Shute shows transactions so far as loans and discounts are concerned from January 20, 1924, to April 10, 1928, of his own transactions, except where he might be a cosigner and is his original record. I will furnish you a copy of this, over my signature, to be placed in the record of this matter. I have a record showing loans and discounts of notes on which Judge Shute was a cosigner.

(Witness hands document to trustee.)

This is a sheet showing loan to S. V. Geare, covering period from May 1, 1924, to January 27, 1925. I will furnish a duplicate of that for filing in lieu of the original.

This is a record of a note of Joseph E. Noble on which G. W. Shute was a cosigner and guarantor. That loan is dated October 18, 1927, and the note was paid February 27, 1928. The books show this note was paid by Mr. Shute. I think the original

(Testimony of Mrs. Sylvan C. Ganz.)

note was delivered to Judge Shute when he paid it. We always deliver a note when it is paid. I have no savings account in the name of G. W. Shute. I have not in the name of Mrs. G. W. Shute, but it is Jessie M. Shute. This record which I show you is from our savings account register. The technical name is savings ledger. This is the sheet carrying the account of Jessie M. Shute [215] in our bank. It begins with an entry on October 28, 1926, with a deposit of \$1100, and closes with an entry as of May 18, 1928, a deposit of \$50.00. It shows a balance of \$1262.30 on April 18, 1928. I will furnish a copy of that to be substituted for this original. I have not been able to find any certificates of deposit or exchange checks covering items that have not been paid. I have made a search. I hold a note at the present time signed by George W. Shute. I have it with me.

(Witness hands note to trustee.)

This was made by us on April 7, 1928, and the amount is \$750. On that date our bank paid to George W. Shute the sum of \$750 in the form of a Cashier's check. I think on the day following Judge Shute paid us \$100,—on April 10th—for previous obligations to the bank. That appears on one of the sheets which I have filed here. I personally made this loan to Judge Shute and had conversation with him at this time. As nearly as I can recall, he came in and said he wanted \$750; I said well, we would think about it, and he said that

(Testimony of Mrs. Sylvan C. Ganz.)

this time he wanted to give us security. He said "I will give you a chattel mortgage on my car." I told him we did not ordinarily take chattel mortgages, but he said he wanted to give it to us. I don't think it was mentioned at all whether there was any money due on the car.

Q. Did he make any statement that there was an encumbrance on it? A. No, sir.

Q. Did he state why he wanted the money at this particular time? A. No, sir.

Q. And you accepted his tender of security as being security without encumbrance on it?

A. Well, that question never came up; I assumed that it was, I suppose.

Q. At that time both he and you made the usual oath in regard [216] to a chattel mortgage, in which it was stated the car was his?

A. Well, whatever that clause is; whatever it says. It is presumed to bind him.

I have also brought the authorization showing Judge Shute has the right to check against the account of Jessie M. Shute, dated October 28, 1926, which applies to savings account #19061. I will furnish you a copy of that. I also have the ledger sheet of George W. Shute, which you requested. I also have cashier's check showing that we gave him \$750 for the note. It was paid in cash, presumably by Judge Shute presenting it himself. There was no reason assigned why that was taken in the form of cashier's check rather than by depositing it to his account. He simply requested it in that form.

(Testimony of Mrs. Sylvan C. Ganz.)

I presumed you would want to know about cashier's checks. I found one which had been issued in cash. It is a cashier's check, \$1500, to Leslie H. Creed. It bears the endorsement of Leslie H. Creed. I do not know him. This stamp on here indicates that it was paid by our bank on April 19th. It was drawn against the account of Jessie M. Shute. I will furnish you with a copy of that. We have a file card here, to help us in finding what we hunt for; it gives a history of the account. I did not have anything to do, personally, with the loan to Joseph E. Noble. Mr. Washburn is the officer of our bank who made that loan. I know nothing of the circumstances, except as disclosed by the record. I made the Geare loan. Mr. Shute came in and said this lady was a friend or client of his in Globe and he wanted to help her out by giving her a loan on some mining stock; it was of small value, and I suggested that in addition, he endorse the note, which he did. The money was then paid to Miss Geare, I believe. I know Miss Geare paid the note. The stock was in the bank, as well as the endorsement. It was Iron Cap, 100 shares. I have it marked for a copy to be made for you.

Q. I asked for the original deposit slip. [217]

You didn't give us time for that. It is an awful job. We will do it for you if you have to have it, but they would not reveal anything to you of value, I am sure. If you could tell me any particular one you wanted, I would get it for you. The original deposit tag reveals very little more than

(Testimony of Mrs. Sylvan C. Ganz.)

the ledger sheet. It very often doesn't show the nature of the deposit and it is a pretty hard job to get them out over a long [218] period of years.

(Examination by Miss BIRDSALL.)

I will submit to you for the record a copy of the deposit of December 31, 1927, in the amount of \$1950.00 or \$1900.00, which you ask for, and will submit any special ones you ask for later. The authorization for Judge Shute to draw on this savings account is still in force. In regard to the cashier's check to Leslie H. Creed dated April 14, 1928, for \$1500.00, I have not with me the check or statement which was signed against the savings account for which this was issued, but I will submit a copy of that. I never saw the check. I just know we have it. I will submit a copy of this cashier's check to Leslie H. Creed. At the time we took the chattel mortgage on the car to secure the note for \$750.00, I didn't know that a conditional sales contract due November 25, 1928, was of record, but we have a record of it. The matter was never discussed. It was a matter of no concern, as we would have loaned it to him anyway. The \$100.00 note which he took up at the time he made this loan was due when he paid it. It was a 30-day note made March 9th, was due April 8th, and paid April 10th. No payment has been made on this \$750.00. On the note of S. V. Geare, she did not come into the bank and sign the note. It was mailed to her. I think she was living somewhere in Missouri at the time, and Judge Shute mailed it to her. I have never

(Testimony of Mrs. Sylvan C. Ganz.)

had any personal transactions with her. Referring to counter check which you present to me signed by Judge Shute, January 4, 1928, payable to "yourself" for \$500.00, I can tell that that came through the window at which he transacted business. That is number five, the savings window. It probably forms a part of the deposit of \$1050.00 made on that day to the account of Jessie Shute; however, I am just guessing as to that. Referring to check you hand me dated January 4, 1927, \$100.00, payable to cash, he got cash on that. There is nothing to indicate that that [219] went into the savings account. Referring to check handed me by you dated June 24, 1927, for \$500 payable to "yourself" and signed by G. W. Shute, that went through the savings department and was credited to Jessie M. Shute on that date. Referring to this check dated November, 1927, and endorsed by G. W. Shute, \$100.00, that went through the savings window and Jessie M. Shute is given credit the same day. The counter check you hand me payable to cash for \$300.00 signed by G. W. Shute dated November 29, 1927, without endorsement, was paid in cash. I do not recognize the writing on the body of that check. The check you hand me for \$150 dated November 17, 1927, payable to cash and endorsed by G. W. Shute, was paid in cash at the window where he does business. The check you hand me dated October 28, 1927, for \$100.00, without endorsement, was paid in cash at the window where he does business. The check you hand me dated April 10th payable to

(Testimony of Mrs. Sylvan C. Ganz.)

“yourself” for \$100.00 was to pay that note for \$100.00. The check you hand me dated August 22, 1927, for \$50.00 payable to “yourself” went through the savings window and was probably part of a deposit of \$100.00 on that date to Jessie M. Shute. (In testifying as to these checks, witness in each instance examines checks before answering.)

(Examination by Mr. NEALON, Trustee.)

This record on the back of the account of George W. Shute in regard to conditional sales contracts—that information was taken from the Record Reporter. It is just a part of our system. If a check is handled through our exchange window and either part or all of it applied in exchange, that is if he would buy a draft or cashier’s check, the check would show the cage number. That would be number 6. The savings window is #5. The window for certificates of deposit is #6. The window through which he would usually transact business is #4. [220]

(Examination by Miss BIRDSALL.)

Q. Do you know where the car is at the present time? A. I have never seen it. [221]

CREDITOR'S EXHIBIT No. —.

Being Copies of Documents Attached to Transcript
of Testimony of Sylvan Ganz Taken Before the
Referee in Bankruptcy at Meeting of Creditors
of June 15, 1928.

SAVINGS DEPARTMENT.

Phoenix, Arizona, 4/14, 1928.

Received of (OK 1500 M. D. Crandall)

FIRST NATIONAL BANK OF ARIZONA.

Fifteen Hundred & no/100——Dollars \$1500.00.

Account No. 19061.

JESSIE M. SHUTE.

Copy.

S. GANZ, VP.

This receipt accompanied by pass book must be
presented in person and will be retained by the
bank.

FIRST NATIONAL BANK OF ARIZONA.

Phoenix, Arizona, April 14, 1928.

#44697.

Pay to the order of Leslie H. Creed \$1500.00 Fif
teen Hundred and no/100 dollars.

G. H. CALVIN,

A. Cashier

Cashier's Check.

(Marked Paid 4-19-28.)

Copy.

S. GANZ, VP

(Back)

Leslie H. Creed.

Pay to the order of

ANY BANK OR BANKER

ALL Prior Endorsements Guaranteed

91-119 Gilbert Branch 91-119 [222]

BANK OF CHANDLER.

Gilbert, Ariz.

Apr. 19, 1928.

Scott Bentley, Asst. Cashier.

The Valley Bank Phoenix, Ariz.

91-2.

Paid through clearings,

April 18, 1928.

Mail.

Authorized Signature of

Jessie M. Shute.

Savings Account

No. 19061.

Amount 1100.

Date Oct. 28, 1926.

I agree to abide by and conform to the by-laws, rules and regulations of the Savings Department of the First National Bank of Arizona, Phoenix, Arizona.

Sign Here—JESSIE M. SHUTE.

Address—81 W. Willetta.

Occupation—

Birthplace—Arizona.

I hereby authorize G. W. Shute to sign checks on my account.

G. W. SHUTE.

Signature of Person Authorized—

JESSIE M. SHUTE,
Signator of Depositor.

Copy.

S. GANZ, VP. [223]

JESSIE M. SHUTE. #19061.

Sig. JESSIE M. SHUTE.

IN ACCOUNT WITH FIRST NATIONAL
BANK OF ARIZONA, PHOENIX, ARIZ.

Date.	Memo.	Withdrawn.	Deposits.	Balance.
10-28-26	New a/c.		1100.00	1100.00
11-18-26			500.00	1600.00
12-13-26	N.B.OK. G.	100.00		1500.00
Int. tp. 1-1-27			9.61	1509.61
6-24-27			500.00	2009.61
Int. to 7-1-27			30.56	2040.17
7-21-27			100.00	2140.17
8-22-27			100.00	2240.17
9-9-27			100.00	2340.17
9-22-27			100.00	2440.17
11-15-27			50.30	2490.47
11-17-27			100.00	2590.47
12-17-27			50.00	2640.47
12/23/27		100.00		2540.47
Int. to 1-1-28			46.83	2587.30
1-4-28			1050.20	3637.50
			50.00	3687.50
2-27-28		1235.20		2452.30
2-28-28			60.00	2512.30
2-17-28			50.00	2562.30
4-14-28			100.00	

4-14-28	1500.00	1162.30
4-18-28	50.00	1212.30
5-18-28	50.00	1262.30

Copy.

S. GANZ, VP. [224]

FIRST NATIONAL BANK OF ARIZONA.

Deposited by

G. W. SHUTE.

Phoenix, Ariz. Sept. 17, 1926.

Dollars. Cents.

Gold	
Silver	
Currency	3400.....
Checks	
“	

(Number of blank lines.)

Copy.

FIRST NATIONAL BANK OF ARIZONA.

By F. E. ROSS,

A Cashier.

Total, \$

SEE THAT ALL CHECKS AND DRAFTS
ARE ENDORSED.

(Instructions to Depositors, etc.)

FIRST NATIONAL BANK OF ARIZONA.

Deposited by

G. W. SHUTE.

Phoenix, Ariz. 12/31. 1927.

Copy.

Dollars. Cents.

Gold	
------------	--

Silver
 Currency
 Checks
 "2000.....
 (Number of blank lines.) [225]

Received

\$100.00

From Above Items.

GEO. SHUTE.

Copy.

S. GANZ, VP.

1900.

Total, \$

SEE THAT ALL CHECKS AND DRAFTS ARE
 ENDORSED.

(Instructions to depositors, etc.)

THE NATIONAL BANK OF ARIZONA,
 PHOENIX, ARIZONA.

LOAN AND DISCOUNT LEDGER.

Name—SARA VIRGINIA GEAR.

Address—

	No.	Date.	Security.
May 1, 1924.	1408	5-1	G. W. Shute 100 sh. Iron Cap Copper Co.
Aug. 7, 1924.	1408		Cert. #C1644
	2594	7-30	G. W. Shute 100 sh. Iron Cap Copper Co.
Nov. 7, 1924.	3820	10-28	G. W. Shute 100 sh. Iron Cap Copper Co.
	3820		
Jan. 27, 1925.			

(Continued)

Time	Due	%	Amount	Payment Amount	Balance Date	Total Liability
90 d.	7-30-24	10	200.00			200.00
				200.00	8-7	
90 d.	10-28-24	10	200.00			200.00
				200.00	11-7	200.00
90 d.	1-26-25	10	150.00			150.00
				150.00	1-27	

Copy

S. GANZ, VP. [226]

THE NATIONAL BANK OF ARIZONA,
PHOENIX, ARIZONA.

LOAN AND DISCOUNT LEDGER.

Name—G. W. SHUTE.

Address—

	No.	Date.	Security.
Jun. 20, 1924.	2035	6-20	100 sh. Cap. Stock
Sept. 19, 1924.	2035	9-19	Iron Cap. Cop-
Nov. 19, 1924.	31		per Co. Cert.
Dec. 18, 1924.	3119	12-18	# C 2130.
Dec. 18, 1924.	4371		
Jan. 19, 1925.	4371		
Sept. 5, 1925.	7403	9-5	
Dec. 15, 1925.			
Dec. 15, 1925.	8550	12-4	
Mar. 3, 1926.	8550		
Mar. 3, 1926.	9397	3-3	
Jun. 3, 1926.	9397		
Jun. 3, 1926.	10374	6-1	
Aug. 31, 1926.	10374		
Aug. 31, 1926.	11297	8-30	
Dec. 1, 1926.	11297		

Dec. 1, 1926.	12319	11-28
Feb. 26, 1927.	12319	
Feb. 26, 1927.	12238	2-26
Apr. 5, 1927.	13657	4-5
Jun. 6, 1927.	13657	
Jun. 6, 1927.	13238	
Sept. 21, 1927.	15392	9-21
Dec. 19, 1927.	15392	
Feb. 8, 1928.	409	2-8
Mar. 8, 1928.	716	3-9
Apr. 7, 1928.	1074	4-7
Apr. 10, 1928.	716	[227]

(Continued.)

Time.	Due.	%	Amount.	Payment. Amount.	Date.	Bal- ance.	Total Lia- bility.
90 d.	9-18-24	10	150.00	150.00	9-19		150.00
90 d.	11-18-24	10	150.00	150.00	12-18		150.00
90 d.	3-17-25	10	150.00	150.00	1-19		150.00
90 d.	12-4-25	10	200.00	200.00			200.00
90 d.	3-4	10	200.00	200.00			200.00
90 d.	6-1	10	100.00	100.00			100.00
90	8-30	10	100.00	100.00			100.00
90	11-28	10	100.00	100.00			100.00

Time	Due	%	Amount	Payment Amount	Balance Date	Total Liability
90	2-26	10	100.00			100.00
				100.00		
90	5-27	10	100.00			100.00
90	7-4	8	285.00			
				275.00		
				100.00		
90	12-20	8	100.00			100.00
				100.00		
30	3-9	8	100.00			100.00
				100.00		
30	4-8	8	100.00	100.00		
90	7-5	8	750.00			850.00
				100.00		750.00

Copy.

S. GANZ, VP.

THE NATIONAL BANK OF ARIZONA,
PHOENIX, ARIZONA.

LOAN AND DISCOUNT LEDGER.

Name—JOSEPH E. NOBLE.

Address— [228]

	No.	Date.	Security.
Oct. 18, 1927.	15693	10-18	G. W. Shute.
Feb. 27, 1928.	15693		

(Continued.)

Time.	Due.	%	Amount.	Payment. Amount.	Date.	Bal- ance.	Total Lia- bility.
	11-1-29	8	1200.00				1200.00
				1200.00			

Copy.

S. GANZ, VP. [229]

(Testimony of George F. Wilson.)

The trustee and objecting creditor thereupon asked counsel for bankrupt to produce the note of Joseph E. Noble, concerning which testimony had been given, and it was thereupon stipulated by counsel for bankrupt that the note was in Mrs. Shute's possession and would be produced in court at the afternoon session without prejudice to Mrs. Shute's rights therein. The same stipulation was made in regard to the production at the afternoon session of the note of Leslie Creed, said to be in Mrs. Shute's possession.

TESTIMONY OF GEORGE F. WILSON, FOR CREDITOR AND TRUSTEE.

(Called as a Witness by Creditor and Trustee.)

(Examination by Miss BIRDSALL.)

My name is George F. Wilson. I am President of the Old Dominion Bank of Globe, Arizona, and have been since 1917. I have not produced with me, in response to the subpoena a record—escrow record of a mortgage of G. W. Shute and Jessie M. Shute, his wife, because Mr. Foster has it. It was withdrawn from our possession some time, I think, about two or three weeks ago. I don't know the exact date. I recall I testified before the referee some time in November. It was in our possession at that time but it has been withdrawn since then by the attorney. I furnished to the referee, in connection with my testimony, a copy of that note and mortgage and of the payments that were made

(Testimony of George F. Wilson.)

[230] thereon. It was thereupon stipulated by counsel for bankrupt that a correct copy of the note and mortgage was attached to Mr. Wilson's testimony given before the referee in November and might be admitted in evidence.

I have produced here to-day the record of a certain contract between Wesley Goswick and L. E. Foster, which is in escrow in our bank. I have already furnished a copy of that contract, together with all payments on that in my former testimony before the referee. There has been additional payments made on that contract since I testified heretofore.

It was thereupon stipulated that the record of contract testified to and payments thereon attached to the testimony of witness given before the referee was correct and might be admitted as part of the testimony of this witness.

Since November 17th the following payments have been made on that contract: on November 27th, \$407.50; December 3d, \$2589.49. Now, there has been charged back against that contract an error of previous payment of \$10.00, which would be a debit. On December 10th, \$150.00; on December 27th, \$975.38; on January 2d, \$6374.62. Since the date of my former testimony modifications of that opinion contract have been filed with the escrow. I have the modification, copy of it. I couldn't state positively what date they were received.

Thereupon it was stipulated that the copy of letter modifying contract produced by the witness

might be received in evidence as an original, the same being admitted as Creditor's Exhibit No. 9, as follows:

CREDITOR'S EXHIBIT No. 9.

(Letter-head of Armstrong, Lewis & Kramer, Lawyers, First National Bank of Arizona Bldg., Phoenix, Arizona.)

“November 26, 1928.

Thos. Armstrong, Jr.,
Ernest W. Lewis, 1875-1927,
R. William Kramer,
G. W. Shute,
Robert H. Armstrong, [231]
Old Dominion Bank,
Globe, Arizona.

Gentlemen:

Referring to the matter of the escrow re sale of Ord Group, Goswick, Foster and the Mercury Mines of America, Incorporated, you will please be advised that the Mercury Mines of America, Incorporated, who has succeeded to the Foster interest, will not be able to make its payment as contracted on the 8th of December. Consequently the parties have agreed upon a modification thereof, copy of which is enclosed you herewith for your files. The original of this agreement is with us, where it will be held awaiting orders from Mr. Goswick relative thereto.

As you will note from the new arrangement, the old [232] agreement on royalties continues and

the payment per month continues and the last payment will be discharged at the rate of \$7500.00 per month. Will you please acknowledge receipt of this notice and copy so that our files will be complete on the matter.

Very sincerely yours,

ARMSTRONG, LEWIS & KRAMER.

By G. W. SHUTE.

GWS:c.

* * * * *

MODIFICATION OF CONTRACT.

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the mutual benefit of the parties hereto, it is hereby agreed that certain agreement made and entered into the 8th day of December, 1926, by and between WESLEY GOSWICK of Roosevelt, Arizona, of the one part, therein called the Vendor, and L. E. FOSTER of Silver City, New Mexico, of the other part, therein called the Purchaser, be and the same is hereby modified, altered and changed as follows:

Sub-paragraph 2, Paragraph 2 on page 2 of said agreement be and the same is hereby modified and changed so that the same will read as follows:

The sum of Five Thousand Dollars (\$5,000) in case at the time of the execution and delivery of this agreement.

The further sum of Ten Thousand Dollars (\$10,000) on or before the expiration of six months from the date of this agreement.

The further sum of Twenty Thousand Dollars (\$20,000) on or before the expiration of one year from the date of this agreement.

The further sum of Eighty-two Thousand Five Hundred Dollars (\$82,500) on or before the [233] expiration of eighteen months from the date of this agreement, and the further sum of Eighty-two Thousand Five Hundred Dollars (\$82,500) payable as follows:

Seventy-five Hundred Dollars (\$7500) on the 8th day of December, 1928 and Seventy-five Hundred Dollars (\$7500) on the 8th day of each month thereafter until the whole sum of \$82,500 is paid. It being understood between the parties that the monthly payment of \$150.00 per month and the royalties herein described apply on the purchase price as of the dates the same are made.

Paragraph 8 on page 5 of the aforesaid agreement be and the same is hereby modified and changed so that it will read as follows:

It is agreed by and between the parties hereto that in the event said Purchaser shall fail, neglect or refuse to make the payments hereinbefore set forth, or fail, neglect or refuse to perform any of the other terms of this contract, and the same shall be declared forfeited to the said Seller hereunder, all tools, supplies, machinery and equipment of every kind placed by the aforesaid Purchaser, his successors or assigns, upon said premises shall become the property of said Seller as of the date when such Purchaser, his successors or assigns, shall fail, neglect or refuse to perform the terms of this agreement or make the payments as herein provided for.

It is further agreed between the parties hereto that the escrow holder named in the aforesaid agreement be notified of the changes occurring in

(Testimony of George F. Wilson.)

said agreement by the handing and delivering to the said escrow holder of a copy of this Modification of Contract. [234]

Instrument signed in triplicate the 6th day of November, 1928, by Wesley Goswick and by Mercury Mines of America, Inc., by Herbert S. Crowther, President, attested by the secretary and sworn to on the 13th day of November, 1928, and acknowledged by Wesley Goswick before a notary public in Maricopa County, Arizona, on November 6, 1928. [235]

TESTIMONY OF MR. WILSON (Continued).

These payments that I have testified have been made on this contract since the date of my former testimony have all been credited to the account of Wesley Goswick. I have the original letter of instructions of former modification of August, 1927, in my possession. I have furnished copies of these letters with the former modification of this contract in connection with my former evidence.

Miss BIRDSALL.—I just wanted to get an admission from counsel. Mr. Moore, will you tell me if the initialing on the side of that letter of instructions "G. W. S." is in the handwriting of G. W. Shute?

Mr. MOORE.—It does not look like it. I will ask the Judge about it and, if he says it is, I will admit it. Yes, I admit that, Miss Birdsall.

Miss BIRDSALL.—With that, I think the copies may be used in evidence, your Honor.

On these payments that have been made since my former testimony I have credited the whole amount

(Testimony of George F. Wilson.)

to Wesley Goswick. That is by special agreement with Mr. Goswick. He comes in the bank and makes a settlement with Mr. Packard under the terms of that letter. Of the former letter in connection with the distribution of the money between Mr. Packard and Mr. Goswick. Formerly 35% of the money was paid first to Mr. Goswick. That was beginning at the time the letter was received, but prior to that time it all went to Mr. Goswick. In August, 1927, there was an agreement by which first 35% was paid to Mr. Goswick's account, and the other 65% was divided equally between Mr. Packard and Mr. Goswick, and that was down up to the time that I gave my testimony at the previous time. Since that date, the amounts have been credited to the account of Wesley Goswick, awaiting Mr. Goswick to come in and make a settlement, that is, an adjustment between themselves. [236] Mr. Packard consented to it. He done it before and we assumed that he has accepted it again. Mr. Goswick didn't give us those instructions. That was an agreement between Mr. Packard and Mr. Goswick. I got my authority to do that from Mr. Packard and Mr. Goswick. When this letter was filed, why, the agreement was that these payments were to be credited to Mr. Goswick until they came in and adjusted it between each other and then they made an adjustment at that time just prior to the time that I testified before and now we are holding these additional payments for that same adjustment between them. The money has all been divided according to the instructions in that letter, except the last payments that have been made—the last few

(Testimony of George F. Wilson.)

payments. We have no written instructions from Mr. Packard and Mr. Goswick about these latter payments being applied to the account of Wesley Goswick. Those two payments have not been actually *been* divided between the two. They are still in the bank to the credit of Wesley Goswick.

Miss BIRDSALL.—Q. Mr. Wilson, you have formerly testified as to a settlement that you made with G. W. Shute in June, 1927, of some indebtedness that was owing to the bank; is that right?

A. Yes, ma'am.

Q. How long had that indebtedness been owing?

Mr. MOORE.—We object to that, your Honor, going into how long Judge Shute had owed the bank, a debt which was paid in 1925, I believe, it was.

A. '23, I think.

Miss BIRDSALL.—No, '27, the bank was paid.

A. 1927.

Miss BIRDSALL.—It goes to the matter of the insolvency of the debtor at the time of his insolvency.

The COURT.—There isn't any question about his insolvency, is there?

Miss BIRDSALL.—There might be a question as to the time of the [237] insolvency. That is our position that gifts made during that time are void. He has testified to a number of gifts made during a period at which time we believe he was insolvent.

Mr. MOORE.—For the purpose of this proceeding, your Honor, I think we can safely state, within the meaning of the bankruptcy law, that Judge

Shute has been insolvent during the past ten years like most of us.

Miss BIRDSALL.—I think this goes back even a further period than that.

The COURT.—Oh, well, I don't care to go back ten years. I don't see that that is material to the issues involved in this case.

Miss BIRDSALL.—It might be, if he had made any gifts during that time; that he did not retain sufficient property to pay his debts.

The COURT.—Do you mean that when people are insolvent to make a gift of money or something else is sufficient grounds to bar a discharge?

Miss BIRDSALL. — It might be sufficient grounds to consider a gift made void and that would go to the title of the property.

Mr. MOORE.—Well, the Court is open to you to adjudicate that. That is not before this Court or involved here.

Mr. NEALON.—Yes, before this Court right now. May I just suggest a thing in that connection, your Honor? It has quite a bearing upon our contention in regard to the Globe property. Now, Judge Shute's contention, which now is that that is separate property, we claim that it is community property. Whether he had a right to give her money—put the property in her name or anything of that kind while he is insolvent, is a very material matter. Now, we wish to show how long he has been insolvent.

The COURT.—There is an admission that he has been insolvent for ten years. Isn't that sufficient?

(Testimony of George F. Wilson.)

Mr. NEALON.—No, not under the testimony.

Mr. MOORE.—How long do you want to go back, Judge Nealon?

Mr. NEALON.—We want to go back to 1912.

The COURT.—I sustain the objection. I don't think that is material.

Mr. NEALON.—An exception, please.

The COURT.—Yes, you may have an exception.

On November 17, there was a withdrawal of \$300.00 and \$1200.00 from the account of Wesley Goswick. Since that time there have been the following: On November 20, \$300.00. On November 28, \$1642.25 and on December 3, \$75.00. On December 8, \$1200.00. On December 10, \$70.54, \$86.95 and \$500.00. On January 2, \$1,000.00. On January 4, \$100.00. The balance in that account at the present time is \$9,882.86. There has been no change in the status of the savings account of Wesley Goswick since my former testimony except an addition of interest, \$250.00. The balance in that account at the present time is \$25,250.00. The checks have all been delivered to Mr. Goswick. I have no knowledge of whom those checks were payable to.

Cross-examination by Mr. MOORE.

I stated that some three weeks ago Mr. Foster withdrew the papers covering the Holmes-Shute mortgage from escrow. That is Graham Foster, an attorney. He is attorney for Mrs. Holmes. I stated in my direct testimony that the original of Plaintiff's Exhibit No. 9, which is the modification of the Wesley Goswick contract, the modification being dated the 6th day of November, 1928. That

(Testimony of George F. Wilson.)

letter says, "The original of this agreement is with us, where it will be held awaiting orders from Mr. Goswick relative thereto." That is the best of my information. [239]

TESTIMONY OF GEORGE F. WILSON, FOR
CREDITOR AND TRUSTEE.

(Given Before the Referee on November 17, 1928.)

(Examination by Miss BIRDSALL.)

My name is George F. Wilson. I am president of the Old Dominion Bank of Globe, Arizona, and have been president of that bank about eleven years. Old Dominion Bank is not a consolidation of other banks; we purchased the Copper Cities Bank outright. The Copper Cities Bank was the successor of the First National Bank, the Bank of Miami and the Bank of Superior,—all three. These three banks were merged in the Copper Cities Bank and we purchased the business, only, of the Copper Cities Bank. The present Old Dominion Bank has the business of the old First National Bank and of the Copper Cities Bank. I have produced here the record of my bank showing accounts of the bankrupt, George W. Shute or Jessie M. Shute. My time for a complete search was very short, but as near as I can say positively now, the only thing we have in the name of the bankrupt, George Shute or his wife is an unpaid escrow. There has been no account in his name for a long time. It really isn't exactly an escrow, either; it is a collection. It is a note and mortgage of Mary E. Holmes, Guardian in the McKillop estate. It is a note due Mary E. Holmes. Many of these payments listed here on the

(Testimony of George F. Wilson.)

note which I have have been made direct to Mrs. Holmes, and there is no endorsement at all on the note. The note is for \$3500, dated January 17, 1921, and the note is for collection. The attorney who left that with me was either Graham Foster or his brother. We have a letter of instructions with reference to it from Mrs. Holmes dated October 11, 1926.

(Whereupon witness reads letter as follows:)

“Old Dominion Commercial Company,
Banking Department,
Globe, Arizona. [240]

Dear Sirs:

I enclose statement of payments made on George W. Shute note made since my last statement. Please endorse same on the note.

Yours,
MARY E. HOLMES.”

The statement shows what payments were made, but we did not endorse them on the note because we hadn't received them, and we thought best to let her endorse them on herself. She doesn't state what was due in 1926, except that we assumed these small amounts were interest payments, and then there is one payment on September 17, 1926 of \$3,000. The note is signed by G. W. Shute and wife on some property I understand she owned. But G. W. Shute is the principal maker of the note. He signs first.

The TRUSTEE.—Q. Mr. Wilson, will you have made for the record a copy of the statements of payments attached to the letter of Mrs. Holmes dated October 11th, 1926, and also copy of the

(Testimony of George F. Wilson.)

original note, and send them to the Referee here to be attached to your testimony?

A. You want a copy of the payments reported by Mrs. Holmes?

Q. A copy of the payments made to Mrs. Holmes and copy of the original note signed by George W. Shute and Jessie M. Shute. I think it would be well to have these in view of the testimony here.

A. All right, I will send them down.

So far as I have examined, there was no checking or savings account of George W. Shute or Jessie M. Shute in my bank. He never banked with my bank in Globe in recent years. I only went back to 1926. I am sure he did years ago. Mr. Shute owed the Old Dominion Bank certain notes. I have a memorandum of those notes. They are paid, but they were not paid in full. There were three notes. The first note was by G. W. Shute to the Old Dominion Bank, dated April 4, 1924, for \$1017.69; accrued interest \$183.06; the second note was by G. W. Shute to the Old Dominion Bank, on [241] the same date, for \$2923.47; accrued interest, \$526.14, making a total of \$3949.16, and accrued interest \$709.20; the grand total was \$4650.36. [242]

I made settlement of those notes by selling those two notes to Judge Shute for \$700. The date of the settlement was June 30, 1927. I settled the total amount for \$700. There was another note representing other indebtedness, but that was a separate transaction. These notes were in 1924. That was an accrued indebtedness that went back prior to 1913. I don't know how the indebtedness

(Testimony of George F. Wilson.)

was originally created because it was prior to my connection with the bank. There was no security whatever for that. Mrs. Shute's name was not on the paper. From the time I entered the bank and became its president eleven years ago I endeavored many times to collect that amount from Judge Shute. The only payment he ever made was one payment of \$25. I do not recall when it was made, but I believe it was about the time these notes were renewed, the last time in 1924. During all of that time he insisted that he was unable to pay those notes. I never located any property out of which collection could be made. The only thing he had was a car, but we realized that nothing could be gotten out of that. It dated from eleven years ago that I started to endeavor to collect this, and the indebtedness had been standing then for some years. I have been familiar with it since 1913, when I became a director. The loan was originally made to Mr. Shute by Governor Hunt. The date of the \$700 compromise was June 30, 1927. The other note I have referred to was signed by G. W. Shute and Harry A. Shute, payable to the Copper Cities Bank, dated January 2, 1925, in the amount of \$3000.00, accrued interest \$425.63. The total was \$3425.63. We settled that for \$1500 on the same day in June, 1927. I don't know the origin of this last indebtedness. It came to us through the Copper Cities Bank. I don't know whether that had anything to do with a loan on some cattle. There was no security. This was a renewal. It

(Testimony of George F. Wilson.)

was renewed once or twice and two or three payments made. I don't think it went back as far as 1912 and 1913, but I [243] don't know my understanding from Mr. Greer was that it was a fairly recent transaction. Harry A. Shute has some property, and that was the reason we made so much better settlement on that note. We threatened to force collection and attach some of his property, and a better settlement was made. This amount of \$1500 paid in settlement was all paid by Judge Shute. I don't know whether he was reimbursed, but the whole amount was paid by Judge Shute. I have no record of a safety deposit box in his name or his wife's. They have not had a safety deposit box with us in recent years. I know there is none there now. I brought with me the record of Virginia Wentworth in my bank. It is both a checking and savings account. Referring to this checking account of Virginia Wentworth, her balance in our bank on the 1st of December, 1927, was \$92.13. Passing on down through December, 1927, the largest amount deposited in the account during that month are two deposits, both \$40. The balance in the account on the 31st of December was \$40.38. There were no large withdrawals or deposits during November or December, 1927. There was not as much as \$900 in the checking account at that time. They are apparently all small items, the largest being \$60. Going through [244] that checking account, it doesn't seem to have ever reached as much as \$200 at any one time. On November 15th of this

(Testimony of George F. Wilson.)

year the balance in the account was \$99.37. There was no deposit in the account in January, 1928. The withdrawals were some small checks; \$20 was the largest of these. Referring to the savings account of Virginia Wentworth, the number of it is 2473. That has been in our bank for two years. Prior to that it was in First National and Copper Cities; it was one of the accounts we took over. The amount of it is \$217.24. The amount of it on the 1st day of December, 1927, was \$101.26; the interest came in there. There were no withdrawals during December, 1927. The amount of that account on the 1st day of January, 1928, was the same amount. The total amount was withdrawn on January 28, 1927. It was closed out before January, 1928, and was reopened on the 14th day of May, 1928. The amount of \$72.00 was put in then. I think I made a mistake in the dates. The amount in that account on December 1st, 1927, was \$103.28. There was no change in the account from July 1, 1926, except interest payments, until January 28, 1927; no deposits or withdrawals until that date. There couldn't have been any money there in December, 1927. The account had been closed and was reopened in May, 1928. It was opened with \$72.00. The present amount of it is \$217.24. There have been no withdrawals between May and the present time. It is my impression that our bank did not make any loan to Virginia Wentworth during the period from November 1, 1927 to January 1, 1928. I am not the credit man in smaller amounts. Any

(Testimony of George F. Wilson.)

amount approximating \$1,000, I would know of. I don't think there was any loan of that amount or over. We have an escrow here between Wesley Goswick, of the first part, and L. E. Foster of Silver City, party of the second part. It is an escrow for mining deed, under which certain payments are to be made. The total purchase price of the property under that contract is \$200,000. The payments to be made on that contract were \$5,000 [245] in cash at the time of the execution of the agreement, which was December 8th, 1926; the first payment after that was \$10,000 within six month; and the next one was \$20,000 within one year; then \$82,500 within 18 months,—that is on or before 18 months; and \$82,500 within two years. That completed the payments. The contract was not drawing interest on those deferred payments, apparently. The party of the second part was L. E. Foster. These are the only parties to that contract. I have the record showing what payments have been made under that contract. I will read them into the record. It starts out with a credit of \$5,000, on December 9, 1926; on the same date, \$150.00 paid. That last seems to be the monthly payment; nearly all the payments are that. Of course it is barely possible that it bears interest, but I see no mention of it; they are, apparently, all payments on the principal.

(Reading payments into the record:) January 9, 1927, \$150.00. On February 9, 1927, \$150.00; on March 9, 1927, \$150.00; on April 9, 1927, \$150.00;

(Testimony of George F. Wilson.)

on May 9, 1927, \$150.00; on June 9, 1927, \$8,950.00. Then we start again on the same date, June 9th, with \$150; on July 11, 1927, \$150; on August 10, 1927, \$150.00; on September 9, 1927, \$150.00; on October 11, 1927, \$150.00; on November 14, 1927, \$150.00; on December 7, 1927, \$13,051.41; then, on the same date, \$1600.00; and on the same date again \$4,448.59; then on the 12 of December, \$150.00; on February 27, 1928, \$413.00; on March 8, 1928, \$150.00; on March 27, 1928, \$62.82; on April 9, 1928, \$147.50; on the same date \$885.00; on April 9, 1928, \$147.50; on the same date \$885.00; on April 11, 1928, \$708.00; on April 11th again, \$150.00; on April 14, 1928, \$29.50; on April 24, 1928, \$610.00; on May 3, 1928, \$600.00; on May 7, 1928, \$30.84; on May 10, 1928, \$150.00; on June 2, 1928, \$152.50; on June 8, 1928, \$77,960.83; on June 7, 1928, \$150.00, and same date, \$150.00; on June 12, \$150.00 on June 27, 1928, \$91.50; on July 10, \$150.00; on August 7, 1928, \$780.75; on [246] August 14th, \$150.00; on August 27, 1928, \$909.38; on September 8, 1928, \$150.00; on September 25, 1928, \$1081.88; on October 11, \$150.00; on November 2, 1928, \$889.50; on November 14, 1928, \$150. We did not have escrow instructions accompanying this contract, except the contract and a letter from Mr. Goswick, which is this file here. The escrow has never even been signed by Mr. Goswick. These payments are all the payments that have been made up to November 14th. The total amount due now is \$78,006.09. We have a lot of these statements here, and I think a lot

(Testimony of George F. Wilson.)

of them are royalty payments; I think you will find all payments here other than the \$150 a month. All the smelter returns have been credited on the escrow agreement and are included in the figures I have read into the record. Every dollar we have received has been credited on the escrow. I have here a telegram stating that a draft has been paid as one of those payments. I will read into the record the letter I have from Mr. Goswick, stating our instructions.

(Witness reads letter:)

“December 19, 1926.

Old Dominion Bank,
Globe.

Gentlemen:

This envelope is deposited with you in escrow subject only to the following instructions:

These papers are to be delivered to L. E. Foster or his order, or assigns, upon demand, when the said L. E. Foster, his agent or assigns, shall deposit with you to the credit of Wesley Goswick the full amount of the total consideration to be paid in the sum of \$200,000 at the times and in the amounts as follows, to wit:

\$5,000 heretofore paid; \$10,000 on or before six months from date; \$20,000 on or before one year from the date hereof; \$82,500 on or before 18 months from the date hereof; \$82,500 on or before two years from the date hereof.

You are instructed that if said payments are not made in the amounts hereinbefore set forth, to ac-

(Testimony of George F. Wilson.)

cept no further payments thereon, and to deliver the enclosed papers to Wesley Goswick, or his order, on demand, time being the essence of these instructions.

You are hereby relieved from any and all liability [247] and claim or claims whatsoever in connection with the receiving, retaining and delivering of the enclosed papers except such liability as may arise in the retention or delivery of such amounts.

Dated at Globe, Arizona, this 9th day of December, 1926.

L. E. FOSTER."

In accordance with those instructions, the payments have been made so that that contract is alive and in force at the present time. The final payment is due next month. I believe it is the 9th. The escrow calls for payment on December 9th.

Q. I am going to ask you when you return to Globe, to have copy of this contract made and we will pay all charges; you can send down and it will be attached to your testimony.

The other letters I spoke of are here.

(Witness submits three letters.)

These three letters, the one dated December 13, 1927, one August 20th and one August 22d, 1927, are the only three communications I have in regard to this escrow.

(Copies of these three letters were submitted in evidence and attached to the testimony of George F. Wilson.)

(Testimony of George F. Wilson.)

I am not certain whether I have a record in my bank of the former option or agreement concerning this property—I haven't looked it up. I did look the matter up between Goswick and any other party; if there has been any other agreement it has been set aside in favor of this one. These claims were previously optioned, but the parties relinquished them. I think all the papers were returned to the parties when the option was forfeited. I know that there was such an option. I don't know the date or any of the details of it, but I do know that such an option existed. I never saw the contract, but I know it existed. I do not know the parties, other than Goswick, but if there ever was such a contract in our bank we will have the escrow instructions left in the files. [248] I will have it looked up and a copy mailed to you or Mr. Smith. I have with me the account of Wesley Goswick. I don't believe I can give the date Wesley Goswick started account in our bank. I brought only the sheets from February 14th, 1926. I know he had an account previous to that, because he had a balance brought forward. The balance at that date was \$2,153.00, even. In the instructions under this escrow which I have testified about and the letters given me by Mr. Goswick in connection with the disposition of money, I deposited certain sums of money received on that escrow to the account of Wesley Goswick. We divided the money according to his instructions and deposited his percentage to his account. I am under the impression that

(Testimony of George F. Wilson.)

the portion that was to be given to Mr. Packard was also deposited. I am reasonably certain that he carries an account in our bank. The cancelled checks of Goswick have been returned, except the few that have been issued since the 1st of November. We return them each month. I don't know whether he has other banking connections. I would say he does the major part of his business through our bank. The address where we send Mr. Goswick's statements is on the sheet there. One is marked "Roosevelt, Arizona," and the other is marked "Arizona Quicksilver Company, Heard Building, Phoenix." His present address is Roosevelt. This one was marked Heard Building, and then it was changed to Roosevelt. I am sure he gets his mail at Roosevelt. The mine is about 95 miles from Globe, so that would make it about 35 miles from Roosevelt. It is nearer Payson, but if it was sent there it would have to be sent back. The only parties who have received any part of the payments that have been received on that escrow are Mr. Goswick and Mr. Packard, through our bank.

Q. I will ask you, Mr. Wilson, to have a complete statement made up of the account of Mr. Goswick, from the 1st day of January, 1925, up to the present time, and submit it for our [249] records, and also copy of the account of William A. Packard, if there is any in the bank, covering the same period of time. A. Very well.

Q. I have here the complete deposit slips of Wesley Goswick to June 9, 1927, in the amount of

(Testimony of George F. Wilson.)

\$9100.00; December 7, 1927, in the amount of \$19,100; December 9, 1926, \$5150; one dated 12/12/27, \$12,600, and one dated 6/8/1928, \$51,148.33, and will ask you to have copies made by your bank of these deposit slips and send them over for the record.

A. I think there is a duplication there. You have one there for \$19,100; that was a wrong entry; was credited and charged the same day. This was changed to \$12,600 to Goswick and \$6,500 to Packard; that \$19,100 is a duplication.

Q. Well, we would like to have copies of these anyway.

Q. When you send over the account of Mr. Goswick, will you make up the account of Mr. Packard the same way, please. A. All right.

This constitutes all that I have produced in the way of records, in answer to subpoena, except there is the savings account of Mr. Goswick, of \$25,000.

(Mr. Wilson produced a card, showing savings account #3586, in the name of Wesley Goswick, showing the amount of \$15,000 deposited September 17, 1928, and that amount still being the balance in such account.)

That was a check deposited, by transfer from the checking account. I do not know if Mr. Goswick has any investments in this county. My understanding was that he was purchasing a ranch in Maricopa County; I heard some talk of it. As I recall it, it was a ranch in the Salt River Valley, so I suppose that would be in Maricopa County. I could not say as to whether we have any record in

(Testimony of George F. Wilson.)

our bank of a transaction between G. W. Shute and Jessie M. Shute and Hoyt Medlar in which certain property was transferred from Shute to Medlar and mortgage given back to Shute, afterwards assigned [250] to the First National Bank of Globe, for \$3629.30. That was handled either by the First National or the Copper Cities, but we acquired that particular property from the Copper Cities; we own it now. It was taken over on that mortgage. I do not know the details of it. I could not say whether Shute or his wife got anything out of that property. That was all concluded and the property turned over to the Copper Cities Bank before we took it over. The only reason I know about it is that the property still stands on our books as the Medlar property, and we own it. I have no knowledge that the proceeds of the sale of that property went into the property now standing in the name of Jessie M. Shute in Globe, known as the Spates property. If the bank held the mortgage the records of Gila County would show it. The Copper Cities records should then show that became of the money and the date, and to whom. Whether they do or not, of course I don't know, but we have most of the records. You see it was a closed transaction before we went in there. We have the property and it was discussed how they had acquired it, at the time we were taking up papers, and, as I say, it still stands on our books as the Medlar property. With regard to indebtedness which we settled with Mr. Shute last year consisting

(Testimony of George F. Wilson.)

of a note signed by him and his brother Harry Shute, they were both makers of that note, but I think Harry's position was what we call an accommodation maker. The note did not show that, but it has been returned to Shute. I recall the note very distinctly however; it was signed by Judge Shute and also by Harry, but it was generally understood in our conversation that he was really an endorser. The word "surety" did not appear. As far as the records show, it was a joint note, on which both were principals. That is the reason it was settled for a larger amount. We were sorry for Harry, and didn't want to force him to the wall; it would probably have broke him to pay it. So far as I know, I have submitted or will have submitted when I [251] have handed over the papers you have requested here,—everything that relates to this bankrupt.

(Examination by TRUSTEE.)

I have known Judge Shute almost since his birth; ever since he was a little boy. Of my own knowledge I could not be certain of fixing a date in my mind as to the time when he was solvent. It would be hard to say. It was my understanding that he was solvent when he left Globe to come to Phoenix, but since then I don't know. We know he wasn't solvent then. We always felt that he would have had the means to pay his obligations if he had cared to. He didn't have any property, but we always felt that if he wanted to, he could have paid the major portion of his indebtedness to us, just from his earnings. I didn't know of any property he

(Testimony of George F. Wilson.)

had, other than this property claimed by his wife, the White-Medlar property, during the years since I have known him. He only had an automobile; he always had a car. During that same period I had no information as to any amount of personal property. He always owed money to somebody, ever since he has been big enough to owe it. We never felt he had property that could be attached. Mr. Greer could give you all the information with regard to this earlier transaction with the bank which we purchased, about the origin of that loan, the loan that we finally compromised. Governor Hunt could probably give you the origin of the indebtedness we settled for \$700; that was largely accrued interest. Interest had been accruing since 1913; it was fifteen years interest, and the principal, you see, didn't amount to much. That indebtedness existed all that time. It was during Hunt's connection with the Old Dominion Commercial Company; it was probably a store bill, originally. [252]

(Examination by Miss BIRDSALL.)

I do not know anything about a transaction of Judge Shute where he and his brother had some cattle. He may have borrowed money on them at the First National or the Copper Cities, but not through the Old Dominion. I did not know he owned racehorses.

(Documents as follows attached to transcript of testimony of Mr. George F. Wilson before the referee in bankruptcy on November 17, 1928, were admitted in evidence by stipulation as true copies of original documents and to be considered as originals:) [253]

Copy.

December 13, 1927.

Old Dominion Bank,
Globe, Arizona.

Gentlemen:

Referring to letter written under date of August 20th, 1927, signed by myself and William A. Packard, in which you are instructed to deduct from all payments made to you, 35% of such payments which you will credit to my account and the balance remaining to be divided equally between myself and William A. Packard.

The amount in the first transaction is \$20,000.00, and of that amount, Mr. Packard is to receive \$6,500.00, the remaining balance to be credited to my account.

Very truly yours,
WESLEY GOSWICK. [254]

Copy.

ARMSTRONG, LEWIS & KRAMER.

Lawyers.

First National Bank of Arizona Bldg.
Phoenix, Arizona.

Thos. Armstrong, Jr.

R. William Kramer.

James R. Moore.

August 22, 1927.

G. W. Shute.

Robert H. Armstrong.

Orme Lewis.

Old Dominion Bank,
Globe, Arizona.

Gentlemen:

Referring to that escrow held by you between

Wesley A. Goswick and L. E. Foster, dated about the 8th of December, 1926, beg to advise that in a settlement of his affairs Mr. Goswick has agreed to give William A. Packard a certain share of any fund to be paid to your bank under the terms of this option, and to that end we enclose you herewith a letter dated August 20, 1927, addressed to you, and signed by Wesley Goswick, accepted by William A. Packard, which disposes of the money received under this option.

Will you please acknowledge receipt of the letter to Mr. Goswick, as well as to William A. Packard, so that they may know that you have received notice of it and that it is agreeable to you.

With kindest personal regards we beg to remain,

Very sincerely yours,

ARMSTRONG, LEWIS & KRAMER,

By G. W. SHUTE.

GWS:c.

cc Wesley Goswick.

William A. Packard. [255]

Copy.

Payson, Arizona, August 20, 1927.

Old Dominion Bank,

Globe, Arizona.

Gentlemen:

Referring to an escrow held by you, executed by L. E. Foster and Wesley A. Goswick, dated on or about the 8th day of December, 1926, wherein you hold a deed to mining claims to be delivered to L. E. Foster, his heirs, executors, administrators or assigns, upon receipt and payment to you to the order and credit of Wesley A. Goswick the sum of

\$200,000.00, you will please deduct from all payments hereafter made to you 35% of such payments, which you will credit to the account of Wesley A. Goswick, and the balance remaining of such payments you will divide equally into two parts, one part of which shall be credited by you to Wesley A. Goswick and the other part to William A. Packard of Payson, Arizona, or his order.

Respectfully yours,
WESLEY GOSWICK.

Accepted:

WM. A. PACKARD. [256]

3500.00. Globe, Arizona, January 17th, 1921.

THREE YEARS after date, for value received, without grace, I promise to pay to Mary E. Holmes, as Guardian of the estate of Helen H. McKillop, an incompetent, or order, at the First National Bank, Globe, Arizona, the sum of Thirty-five Hundred & 00/100 (\$3,500.00) Dollars, with interest at the rate of ten per cent (10%) per annum from date until paid, said interest payable quarterly, and ten per cent (10%) additional for attorney's fees, if collected by law or placed in the hands of an attorney for collection. Each party hereto waives presentment for payment, notice of non-payment, protest and notice of protest, and diligence in bringing suit against any party hereto, and each party signing this note consents that time of payment may be extended without notice.

G. W. SHUTE.

JESSIE M. SHUTE. [257]

THIS AGREEMENT, Made and entered into this 8th day of December, 1926, by and between WESLEY GOSWICK of Roosevelt, State of Ari-

zona, of the one part, hereinafter called "Vendor," and L. E. FOSTER of Silver City, State of New Mexico, of the other part, hereinafter called "Purchaser,"

WITNESSETH:

(1) That the Vendor, for and in consideration of the sum of One Dollar (\$1.00) to him in hand paid by the Purchaser, the receipt whereof is hereby acknowledged, and of the covenants, promises and agreements hereinafter set forth which are to be kept, observed and performed by the Purchaser, does hereby covenant, promise and agree that upon the payment of the purchase price of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) good and lawful money of the United States of America, at the times and in the manner hereinafter specified, he will sell, transfer and convey to the Purchaser, or to his order, by a good and sufficient quitclaim deed, duly executed by the Vendor and his wife, if he has one, all those twenty-(20) certain unpatented lode mining claims situate upon and near what is commonly known as Slate Creek, Gila County, State of Arizona, the names of which, together with books and page of record, as the same appear in the office of the County Recorder of Gila County, State of Arizona, are as follows:

* * * * *

(Here follows description with book and page of record, same not copied here.)

* * * * *

(2) The purchase price of Two Hundred Thousand Dollars (\$200,000.00) shall be paid into the Old Dominion Bank at Globe, State of Arizona, by the Purchaser, his heirs, executors, administrators

or assigns, to the order and credit [258] of the Vendor, at the times and in the amounts as follows:

The sum of Five Thousand (\$5,000.00) Dollars in cash at the time of the execution and delivery of this agreement; the further sum of Ten Thousand (\$10,000.00) Dollars on or before the expiration of six (6) months from the date of this agreement; the further sum of Twenty Thousand Dollars (\$20,000.00) on or before the expiration of one year from the date of this agreement; the further sum of Eighty-two Thousand Five Hundred Dollars (\$82,500.00) on or before the expiration of eighteen (18) months from the date of this agreement, and the further remaining sum of Eighty-two Thousand Five Hundred (\$82,500.00) Dollars on or before the expiration of two (2) years from the date of this agreement.

* * * * *

(Subdivisions (3), (4) and (5) are covenants concerning escrowing of agreement, possession of property and other matters not material to issues herein, and are not copied herein.)

* * * * *

(6) The Purchaser shall remit to said bank, to the order and credit of the Vendor, as royalty, twenty-five (25%) per cent of the gross furnace or reduction works returns upon all ores or concentrates extracted and sold from said premises during the term hereof, the payment thereof to be made in each case within ten days after the receipt of returns thereon, and to be accompanied by duplicate smelter or mill returns, and which sum or sums so remitted shall be credited upon the purchase price

of said premises and upon the next payment to fall due thereon.

* * * * *

(Subdivisions (7), (8), (9), (10) and (11) cover provisions and covenants of said contract not material to issues [259] herein, and are not copied.)

* * * * *

(12) It being further agreed that the Purchaser shall at all times during the life of this agreement pay to the Vendor the sum of One Hundred Fifty Dollars (\$150.00) per month beginning on the 10th day of December, 1926, and monthly thereafter on the 10th of each month, which said amount shall constitute a payment upon the purchase price, and such sums as shall be paid deducted from the payment next due.

* * * * *

(Subdivision (13) covers provisions and covenants of said contract not material to issues herein, and is not copied.)

* * * * *

(14) It is understood and agreed by and between the parties hereto that if the Purchaser, his heirs, executors, administrators or assigns, shall fail, neglect or refuse to make such payments, or any one or more of them, as hereinabove provided, or shall fail, neglect or refuse to otherwise comply with any of the terms and conditions of this agreement, then he or they shall, at the option of the Vendor, forfeit his or their right to purchase said premises and his or their right to the possession thereof, and shall upon demand deliver up immediate possession of said premises to the Vendor, and shall also forfeit as liquidated damages for

such failure, neglect or refusal, all payments less than the whole of said purchase price theretofore made under this agreement; and

(15) It is further understood and agreed by and between the parties hereto that this agreement is an option from the Vendor to the Purchaser, his heirs, executors, administrators and assigns, and that he and they shall not be subject to any [260] liability for his or their failure, neglect or refusal to comply with any of the provisions, terms and conditions hereof, except as is hereinbefore in the last preceding section provided; and that this agreement and every covenant, promise and agreement herein contained shall be binding upon the parties hereto and upon their respective heirs, executors, administrators and assigns; and that the Purchaser may assign this agreement and his assigns shall have all of the rights hereby vested in him subject to the conditions hereinabove contained and subject to such other conditions as may be imposed by him.

(16) It is understood and agreed that this agreement shall be executed in triplicate and that one triplicate original hereof shall be deposited in said Old Dominion Bank at Globe, State of Arizona, for the guidance of the said bank in carrying out the trust herein imposed upon it, and that such triplicate original so deposited in said bank shall serve as the written escrow instructions to said bank hereinabove provided for, or in case said bank refuses to accept such triplicate copy as its guide then the deed hereinbefore mentioned shall be deposited under instructions to said bank to deliver the same upon the payment to it to the credit of the Vendor as hereinbefore specified of the amounts of the purchase price at the times mentioned herein.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals in triplicate on the day and year in this agreement first above written.

WESLEY GOSWICK, (Seal)
Vendor.

L. E. FOSTER, (Seal)
Purchaser.

* * * * *

(Instrument acknowledged by both parties.)

[261]

By stipulation the deed of Albert G. Sanders and Mary E. Sanders to Jessie M. Shute dated December 20, 1920, conveying Globe property known as the Shute home place, was admitted in evidence as Creditor's Exhibit No. 10, said exhibit being a regular form warranty deed dated December 20, 1920, signed by Albert G. Sanders and Mary E. Sanders with separate acknowledgments of said grantors conveying to Jesse M. Shute, the grantee, for a consideration of \$10 and other valuable consideration certain property situate, lying and being in block number 45 of East Globe Townsite in the City of Globe, County of Gila and State of Arizona, more particularly described as:

Commencing at the Southeast corner of said Block Number Forty-five (45) of East Globe Townsite and running thence North along the West line of Second Street One Hundred and Thirty-eight (138) feet; thence West parallel with Sycamore Street One Hundred and Two (102) feet; thence South parallel with Second Street, One Hundred and Thirty-eight (138) feet; thence East along the

North line of Sycamore Street One Hundred and Two (102) feet to the place of beginning.

There is no recitation in said deed that said property is the separate property of Jessie M. Shute, the conveying clause reading as follows: "For and in consideration of the sum of Ten (\$10.00) Dollars / and other valuable consideration to them in [262] hand paid by Jessie M. Shute, of the same place, have granted, sold and conveyed and by these presents do grant, sell and convey unto the said Jessie M. Shute that certain lot, piece or parcel of land, etc."

\$6.50 in revenue stamps cancelled 1/17/21.
G. W. S.

Said instrument being filed and recorded at the request of Geo. W. Shute in Gila County, Arizona, on the 17th day of January, 1921.

By stipulation realty mortgage from G. W. Shute and Jessie M. Shute, his wife, to Mary E. Holmes, as guardian of the person and estate of Helen H. McKillop, an incompetent, covering the Globe property home place dated January 17, 1921, was admitted in evidence as Creditor's Exhibit No. 11. Said Exhibit No. 11 consists of an ordinary form realty mortgage executed by G. W. Shute and Jessie M. Shute, his wife, to Mary E. Holmes as guardian of the person and estate of Helen H. McKillop, an incompetent, the mortgagee, dated January 17, 1921, covering property described as Lots numbers 1, 2, 3, 4, 5 and 6, in Block 45, East Globe Townsite, Gila County, Arizona. Said mortgage is for the

sum of \$3500.00 given to secure the payment of a certain promissory note given by G. W. Shute and Jessie Shute dated January 17, 1921, said note being set up in full in said mortgage, as follows:

CREDITOR'S EXHIBIT No. 11.

"3500.00 Globe, Arizona, January 17th, 1921.

THREE YEARS after date, for value received, without grace, I promise to pay to Mary E. Holmes as guardian of the estate of Helen H. McKillop, an incompetent, or order, at The First National Bank, Globe, Arizona, the sum of Thirty-five hundred & 00/100 (\$3500.00) Dollars, with interest at the rate of ten per cent (10%) per annum from date until paid, said interest payable quarterly, and ten per cent (10%) additional for attorney's fees, if collected by law or placed in the hands of an attorney for collection. Each party hereto waives presentment for payment, [263] notice of non-payment, protest and notice of protest and diligence in bringing suit against any party hereto, and each party signing this note consents that time of payment may be extended without notice.

(.70 cancelled Revenue Stamps attached.)

(Signed) G. W. SHUTE,
JESSIE M. SHUTE."

Said mortgage was acknowledged January 17, 1921, by G. W. Shute and Jessie M. Shute before H. M. Foster, notary public, Gila County, Arizona, and was recorded in Gila County, Arizona, at the request of Foster & Foster on January 17, 1921.

By stipulation, certified copy of the declaration

of homestead dated June 16, 1928, sworn to by Jessie M. Shute on the same date and filed and recorded at the request of G. W. Shute on the 18th day of June, 1928, was admitted in evidence as Creditor's Exhibit No. 12. Said Exhibit No. 12 is as follows:

CREDITOR'S EXHIBIT No. 12.

“DECLARATION OF HOMESTEAD.

KNOW ALL MEN BY THESE PRESENTS: That I, JESSIE M. SHUTE, being the head of a family consisting of myself and my husband, G. W. Shute, residing in Phoenix, Maricopa County, State of Arizona, and being desirous of holding and availing myself of the provisions of Chapter 1, Title 20, Revised Statutes of Arizona, Civil Code, 1913, entitled ‘Homesteads’ do hereby declare and show that I am the head of a family as aforesaid and hereby select as a homestead all that certain piece and parcel of land situate, lying and being in the Town of Globe, Gila County, State of Arizona, described as:

That certain piece or parcel of land situate, lying and being in Block 45 of East Globe Townsite in the City of Globe, Gila County, Arizona, described as follows: Commencing at the southeast corner of Block 45, running thence north along the west line of Second Street, 138 feet, thence west parallel with Sycamore Street 102 feet, thence south parallel with Second Street [264] 138 feet, thence east along the north line of Sycamore Street 102 feet to the point of beginning.

That said property is my separate property and has been purchased and acquired by the separate funds of myself and said property stands of record in my name and is of the value of Thirty-five hundred Dollars (\$3500.00) all being in one compact body.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of June, A. D. 1928.

JESSIE M. SHUTE.”

(Sworn to by Jessie M. Shute before R. E. Conger, Notary Public, Maricopa County, Arizona, June 16, 1928.)

(Filed and recorded in Gila County, Arizona, at the request of G. W. Shute on June 18, 1928, at 45 minutes past 4 o'clock P. M.)

By stipulation certified copy of the adjudication of bankruptcy filed in the office of the County Recorder of Gila County, Arizona, was admitted in evidence as Creditor's Exhibit No. 13. Said Exhibit 13 is as follows:

CREDITOR'S EXHIBIT No. 13.

(Title of Court and Cause.)

At Phoenix, in said District, on the 17th day of April, A. D. 1928, before Honorable F. C. Jacobs Judge of the said Court in Bankruptcy, the petition of George W. Shute, a lawyer, of Phoenix, Maricopa County, Arizona, that he be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having

been heard and duly considered, the said George W. Shute is hereby declared and adjudged a bankrupt accordingly.

IT IS THEREFORE ORDERED, That said matter be referred to R. W. Smith, Esq., at Phoenix, Arizona, one of the Referees in Bankruptcy of this Court, to take such further proceedings [265] therein as are required by said Acts; and that the said George W. Shute shall attend before said Referee on the 23rd day of April, 1928, at Phoenix, Arizona, and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said Bankruptcy.

WITNESS, the Honorable F. C. JACOBS, Judge of the said Court, and the seal thereof, at Phoenix, in said District, on the 17th day of April, A. D. 1928.

[Seal]

C. R. McFALL,
Clerk.

By M. R. Malcolm,
Deputy Clerk.

Filed Apr. 17, 1928. C. R. McFall, Clerk.
United States District Court for the District of Arizona. By M. R. Malcolm, Deputy Clerk.

Certification of same as being a true copy of order of adjudication and reference in bankruptcy B.-486, Phoenix, George W. Shute, dated June 6, 1928, by the Clerk of the District Court of the United States for the District of Arizona, is attached. Said instrument was filed and recorded in Gila County, Arizona, at the request of Thomas

W. Nealon on the 8th day of June, 1928, at 50 minutes past 11 o'clock A. M. [266]

Mr. NEALON.—We are offering the admissions against interest of Judge Shute.

The COURT.—I understand you are offering certain admissions?

Mr. NEALON.—Yes.

The COURT.—Why not offer the document as to all admissions against interest. Don't you think that I would be able to pick them out in reading the testimony to determine which are admissions against interest? Do you think it is necessary to specify each particular question and answer?

Mr. NEALON.—Of course, if your Honor wants to take it that way—I was trying to follow—

The COURT.—I assume that you introduce the record for the purpose of showing, as you say, admissions against interest. All evidence which is properly to be considered by the Court as admissions against interest, if there are any such, will be considered and it seems to me to pick out this—these certain paragraphs—questions or answers and from the detailed testimony would not add anything to what has already been stated.

Mr. NEALON.—It is only this and if we have that opportunity some time during the trial or after the trial, if your Honor wants it in brief form—We wish to correlate this. It is very difficult for your Honor to pick it out through a whole mass of testimony. In other words, the Hudson car is

one charge. We would like in some manner to point out the relation of one item to another.

The COURT.—All in the world that you have got to do is to give me a little memorandum showing, as you say, a Hudson car, pages so and so.

Mr. NEALON.—Furnish you that some time during the trial?

The COURT.—Yes.

Mr. NEALON.—All right. In that case, I can see no objection. We offer then— [267]

The COURT.—You certainly can't lose anything by it and I don't see that the other side can.

Mr. MOORE.—Your Honor, we were just waiting to make the same suggestion and objection that the Court has. It would be manifestly unfair to offer one question and one answer from a page and skip to something else. It is a connected story as it goes.

Mr. NEALON.—In the other way, it would be a connected story also but we are perfectly willing to do that, if your Honor please. We were trying to get away from any possible objection on the other side in the method of offering.

The COURT.—You know these hearings on an application for discharge, where objections are filed, are not to be heard under the strict rules that govern the trial of jury cases and usually counsel do not stand on technicalities and it seems to me that even though some testimony might be introduced or offered or admitted that would be subject to some technical objection; what you want

to do is to get all of the facts before the court, because the question of good faith is nearly always involved in a case of this character and evidence which might otherwise not be admissible might well be considered in these proceedings.

Mr. NEALON.—Well, then, we offer, in accordance with the suggestion of the Court, all of the admissions against interest contained in the testimony of Judge Shute heretofore taken before the referee.

The COURT.—And with the privilege of pointing out in a memorandum to be furnished by the Court, if you so desire, any particular portions of that testimony.

Mr. NEALON.—That is satisfactory, if your Honor please.

The COURT.—And with the privilege on the part of the opposing counsel of doing likewise as to any explanatory statements made during the examination. [268]

It was stipulated by counsel for bankrupt that a certain letter marked Exhibit 14 for identification offered in evidence by trustee and objecting creditor, was a copy of a letter written by Miss Birdsall to G. W. Shute dated November 23, 1927. That prior to the filing of the conditional sales contract, being Creditor's Exhibit No. 4, negotiations were pending between Judge Shute and Miss Birdsall on behalf of Mr. Mackay, the objecting creditor, over this particular claim, and that Miss Birdsall

(Testimony of W. W. McBride.)

was threatening to sue him and wrote to him to that effect on November 23, 1927.

TESTIMONY OF W. W. McBRIDE, FOR
CREDITOR AND TRUSTEE.

(Being Called as a Witness by the Creditor and
Trustee.)

(Examination by Mr. NEALON.)

My name is W. W. McBride. I am a special agent for the United States Department of Justice. In such capacity, I have made an investigation in regard to the bankruptcy of George W. Shute. I had interviews with George W. Shute in regard to the same. [269] I could not give you the exact date of these interviews. It would be between about the 19th of November and about the 25th or 6th, 1928. These interviews took place in Judge Shute's office. During the first interview, Special Agent P. E. Reynolds, also of the Department of Justice, was present. I was alone at all the subsequent interviews. At this first meeting with Judge Shute, at his office, I had a conversation with him in regard to a savings account in the First National Bank of Arizona at Phoenix, Arizona, being account No. 19061, in the name of Jessie M. Shute. That conversation was never reduced to writing. During this conversation, Judge Shute was interrogated relative to the source from which this money came covering the savings account of Mrs. Shute. Judge Shute stated that the first \$1100.00 of that

(Testimony of W. W. McBride.)

account came largely from his personal earnings and that a portion of that deposit to her account, subsequent to the deposit of the \$1100.00, also came from his earnings and that a further portion came from rents realized from certain Globe property held in Mrs. Shute's name. He gave no figures at all as to the amount. He made no definite statements as to the portion. The note of Joseph E. Noble was discussed with Judge Shute on this occasion. Judge Shute stated that Joseph E. Noble, who was a friend and acquaintance of some years of both he and Mrs. Shute, came to him and advised with him—that it was necessary that he have a certain amount of money and that he suggested that Mrs. Shute had a savings account and that if he would take the matter up with Mrs. Shute he probably would be able to obtain the money and that, pursuant to his suggestion to Mr. Noble, Mr. Noble went personally to Mrs. Shute and took the matter up with her, requesting the loan, and that Mrs. Shute consented to the loan and authorized Judge Shute to make the loan, with the understanding that in the event that the loan was not paid by Mr. Noble when due that the bank—the First National Bank of Arizona would be paid out of her savings [270] account. He did not tell me how that note was signed. Except he stated—as I remember, he stated that he paid the note but I don't remember the particulars. In fact, I don't believe that he related them. My mind is not very clear on the point of any conversation with him about a pay-

(Testimony of W. W. McBride.)

ment to Leslie Creed from that same account. I don't remember of that point being discussed. If so, it was very little and merely a suggestion that the loan had been made by Mr. Shute but I don't remember definitely. On this occasion, a contract or agreement with one Wesley Goswick was discussed in considerable detail. I discussed the matter, asking Judge Shute just what part he played in this transaction with respect to the sale of the mining property by Goswick to L. E. Foster of the Tonto Mining Company. Judge Shute stated that he had handled the papers; that he had not drawn the contract but that he had reviewed the contract, which had been drawn by other parties, and had passed on it and had handled that for Mr. Goswick and that because of his work in connection with that and because of certain courtesies which he had shown to Mr. Goswick in times past and because of the long standing friendship existing between them that Mr. Goswick gave him, as a gift, a portion of the contract price, which approximated 10% thereof. Judge Shute stated that he had received—interrogated as to the amounts that he had received—admitted that he had received these amounts approximately but stated that they were gifts. He also stated that he had recently, acting as the agent and attorney for Mr. Goswick, drawn up an extension of time covering the last payment on this contract, amounting to \$82,500.00, stating that the provision of this agreement, which, as I understood, at that time had not been com-

(Testimony of W. W. McBride.)

pleted, that is, had not been accepted but it was in the period of negotiation, provided for a payment of \$7500.00 per month, beginning on the 8th day of December, and that amount paid on the 8th day of each month thereafter until the entire amount of [271] \$82,500.00 had been paid. I think that Judge Shute had the agreement before him but I am a little uncertain about that. Anyway, upon being interrogated relative to the terms of the contract, Judge Shute stated that the terms of the contract provided for the sale thereof in the amount of \$200,000.00, to be paid in five installments, \$5,000.00 upon the execution of the contract, which was on December 6, 19—December 8, 1926; \$10,000.00 on June 8, 1927; \$20,000.00 on December 8, 1927; \$82,500.00 on June 8, 1928, and \$82,500.00 on December 8, 1928. He stated that all payments, except the last one, had been made and that it was in connection with the last payment that this extension of time was being effected. He also stated that the last payment received by him from Goswick was \$8,000.00, which had been received on the 8th day of June, 1927—paid in cash and, as I stated before, Judge Shute stated that this was a gift and not pursuant to any contract. As I understood him—my mind is just a little hazy on that point but my understanding was that the last payment was \$8,000.00 on June 8, 1928; the payment immediately preceding that was \$2,000.00 on December 31, 1927, and, as I remember, a thousand dollars on June 8, 1927, but I am not certain about the first payment.

(Testimony of W. W. McBride.)

This subject was brought up at a subsequent interview with Judge Shute. At the first interview, Judge Shute stated that he had received on June 8, 1928, the sum of \$8,000.00 in cash. At the second interview, I interrogated him relative to the disposition made of the \$8,000.00 and he advised at that time that he had a portion of that in the safe there in the office of the firm of Armstrong, Lewis & Kramer and I asked him if he would exhibit the amount that he had and he said he would and proceeded to the safe and displayed to me in bills an amount which appeared to be \$2500.00. I know we counted it rather roughly and decided it was \$2500.00. He stated that he had expended the other portion of the \$8,000.00 for meeting certain obligations of various nature, not detailing, of course, [272] the manner in which it was expended but he stated that that was the balance. It was my understanding that those were for debts; that he had paid certain outstanding obligations of various character with the other portion. That particular point was brought up at the second interview. I did not interrogate him relative to the disposition of the \$8,000.00 at the first interview. I am a little in doubt now whether there was a third interview. There may have been but I don't remember anything. I think probably there was a third interview and I think I interrogated him relative to his interest in the firm and interest in the firm equipment, etc., and at that time he gave me certain figures with respect to his interest in the firm and

(Testimony of W. W. McBride.)

equipment. In one of these interviews I was discussing the matter with Judge Shute of his making an arrangement or settlement of some kind between Wesley Goswick and Mr. Packard in regard to some dispute about this property. I asked him just what the arrangement was and he advised that some time after the execution of the original contract between Goswick and L. E. Foster that there had been some little friction or disagreement between Mrs. Packard and Mr. Packard and Mr. Goswick over the contract. I don't think he stated just what that difficulty was but, at any rate, there was some misunderstanding that they were trying to iron out; that he, having been a friend of both parties, having acted as legal advisor in various capacities, was selected to discuss the matter and effect an adjustment between the parties and that he visited Mr. Packard and the substance of his conversation was this; it seemed that a man by the name of Henderson—Jess Henderson, who is also a son-in-law of Goswick and a brother-in-law of Packard, claimed to have an interest of \$50,000.00 in the contract price of this property, claiming to have effected the sale, with the understanding that he would receive all over \$150,000.00, the contract price being \$200,000.00. That would leave \$50,000.00. So, in this conference [273] with Packard, he said, "Now you claim, referring—" speaking to Packard—"You claim that Henderson is entitled to \$50,000.00. Therefore, you have no interest in that. Therefore, we will deduct the \$50,-

(Testimony of W. W. McBride.)

000.00 from the \$200,000.00, which leaves \$150,000.00. Now, you claim that I am entitled to \$20,000.00. Therefore, you have no interest in that. We will deduct that from the \$150,000.00, leaving \$130,000.00. In other words, \$130,000.00 is all that you claim an interest in, claiming a one-half interest in \$130,000.00. Therefore, will you agree to dividing the \$130,000.00 equally between you?" Judge Shute stated that William Packard accepted that proposition, \$65,000.00 or 50% of the \$130,000.00, which was the balance after deducting the \$50,000.00, [274] which Packard claimed was due Henderson, and the \$20,000.00 which Packard claimed was due Judge Shute in connection with the contract. I have a piece of paper here upon which Judge Shute placed, in his own handwriting with lead pencil, the figures describing the interview which he had with Packard. I will produce that paper. These figures were made in my presence.

Thereupon, life insurance policy of G. W. Shute No. 3310053, Mutual Life Insurance Company of New York, requested by the trustee to be produced in court, was produced by counsel for bankrupt and offered and received in evidence without objection. By order of the court it was not filed, and thereafter it was stipulated between counsel that said policy showed on its face that the cash surrender value thereof on April 17, 1928, was \$746.85, and that Judge Shute could change the beneficiary on the policy.

Thereupon it was stipulated by counsel that receipt signed by G. W. Shute given to Thomas W.

(Testimony of W. W. McBride.)

Nealon, the trustee, on August 1, 1928, covering said policy of insurance, said policy having been delivered to said bankrupt by said trustee so that Judge Shute might obtain a loan thereon and retain his policy, was admitted in evidence as Creditor's Exhibit No. 15.

TESTIMONY OF W. W. McBRIDE (Continued).

I have before me the paper which was before Judge Shute at that time, upon which appears pencil figures explaining the story that he was telling to me relative to his conference with Mr. Packard. That is the paper to which I referred before lunch in my testimony.

Said paper referred to by witness was then admitted in evidence without objection and by stipulation of counsel a copy of the same made by the witness was substituted for the original. Said document substituted for the original was admitted [275] in evidence as Creditor's Exhibit No. 16, and is as follows:

CREDITOR'S EXHIBIT No. 16.

	50000
	20000
	<hr/>
200000	70000
70000	
<hr/>	
130000	

This is to certify that the above is a true and exact copy of the original memorandum which was made in my presence by George W. Shute, and in

(Testimony of W. W. McBride.)

connection with which I testified in hearing on application for discharge, on January 9, 1929.

W. W. McBRIDE.

W. W. McBRIDE,

Special Agent, U. S. Department of Justice.

[276]

I don't remember at this time or subsequently having any further talk with Judge Shute about this Goswick matter, other than that which I have already testified. There may possibly have been some detail that I have overlooked but I don't remember that at this time. I don't remember that I testified to a matter of his having received \$8,000.00. I think it appears in the record. The information—similar information was obtained by the trustee and displayed to me in connection with the matter. I would say that it was possibly in the late afternoon of the same day that I had the conference with Mr. Shute. I could not tell you the day of the week. It was before Thanksgiving. I left Phoenix on the evening of November 27 at 10:10 P. M. And it was a short time prior to that. Just within a day or two prior to November 27, 1928. The matter of the Globe property,—the home—what is known as the Shute home over there—was discussed with Mr. Shute during our interview. That was at the first interview. I first asked Judge Shute what the—as I remember—what the valuation of the Globe property was and he stated that he thought probably about \$5,000.00 and then I questioned him regarding the title and the ownership of this property and he stated that this property was in Mrs. Shute's name and that both he and Mrs. Shute regarded that as

(Testimony of W. W. McBride.)'

her separate estate. Then, I interrogated him relative to the origin, that is, the source from which he obtained title. In other words, I wanted to determine just on what ground he contended that this was her separate estate. Prior to that, I had read, of course, the hearings that had taken place before the referee in bankruptcy. In that hearing, it stated there that Mrs. Shute had formerly owned property at Prescott, Arizona, and that through a series of transactions this Globe property arose as the result of that. In other words, she obtained this by virtue of property which she owned at Prescott and which was sold. That was the impression that I obtained from reading the hearing before the [277] referee in bankruptcy. Therefore, I was interrogating him with respect to the origin of the title and Judge Shute stated at that time that—stated the circumstances under which she obtained title to the property and why they regarded that as her separate estate and in so doing stated that at one time some time prior to the purchase of this property that he had sold certain property which I thought—which I regarded as community property—and without her permission—and as the result of it there was some little disagreement—some misunderstanding in the home regarding that and Mrs. Shute stated that—as I remember, she returned to her home up in Prescott and stated that she would return when she had a place—home in which to live and that Judge Shute purchased this home—had it placed in her name and that they regarded that as her property by virtue of the agreement between her and Mr. Shute, which agreement was inspired

(Testimony of W. W. McBride.)

by the former sale of this other property, which was sold without her consent. The point was not discussed as to whether the property sold at Prescott was her separate property, but I merely asked him with respect to that and then he based title to this property on the grounds that I just suggested, stating that he regarded it as her property, for the reasons that I have just stated, not because of the Globe property or the Prescott. I don't believe it was discussed about in whose name the Prescott property stood at that time. I don't think there was at subsequent interviews any further reference to this property. I don't remember of any further discussion on that point. I asked Mr. Shute if he purchased this Essex coach for his wife and he stated that he did. That is about the only discussion on that point. He merely stated that he had purchased it and, as I remember, turned in an old Essex car that she had at that time as part payment. I never discussed with him in regard to a check given to the A. E. England Motor Company for \$995.00. I had a discussion with him in regard to a \$250.00 item that had been [278] paid to Arthur La Prade. As I remember, Arthur La Prade was a friend of Judge Shute and that he had come to him some time prior to the payment of this check and advised that he had in mind certain investments in the State of Louisiana in connection with leases and advised Judge Shute that it appeared to be a good investment and solicited him for the sum of \$250.00 to purchase those leases with and that subsequent to the filing of the petition in bankruptcy in this case Mr. La Prade came to Judge Shute and

(Testimony of W. W. McBride.)

stated that he had noted that he had gone into bankruptcy and that he felt that he was in part responsible for the loss which had been sustained as the result of investment in this property, which turned out to be a poor investment, and, therefore, gave Judge Shute \$250.00, representing the \$250.00 which he had obtained from Judge Shute for the purpose of investing in the Louisiana leases. I asked Judge Shute if such and such a day he purchased a phonograph for the home and he stated that he did. I think it was near Christmas time of 1927, as I remember. It may possibly have been '26 but I believe it was 1927. For the sum of \$365.00. Nothing further was said about that except that he had the phonograph at his home. I don't remember whether I first discussed the savings account with Judge Shute or not but I remember very well the conversation with respect to the savings account and that was that the first \$1100.00 which was deposited by Mrs. Shute was largely from his earnings and that certain portions of this savings account that were deposited subsequent to the deposit of the \$1100.00 came from his earnings and from rents from the Globe property. As I remember, the matter of the withdrawal of that fund subsequent to the institution of proceedings in bankruptcy was not discussed in detail but it does seem to me that Judge Shute stated that Mrs. Shute had withdrawn on advice of counsel the sum of a thousand dollars. I think he stated that Mrs. Shute had consulted some lawyer up in Globe, whose name I don't remember just now, but there was very [279] little discussion on it. I think it was just mentioned. He did

(Testimony of W. W. McBride.)

not say anything about any conference himself with this lawyer. I think his income tax return for the year 1927 was discussed briefly and, as I remember, his response to that was that one of the girls in the office had prepared the income tax and had—and that he being busy with other duties and feeling that she was capable of handling those things probably he had not paid as much attention to it as he should have done when it was filed—some statement there similar to that. I have seen the copy of the income tax return for 1927. I observed the item contained therein about the receipt of a thousand dollars from Wesley Goswick for commission. I think the only explanation he made in regard to that particular item was that given with respect to the income tax return, that it was prepared by the girl in the office and that he, perhaps, had not examined it as carefully as he should have done. I asked him if he had sworn to it and he stated that he had; that that was his but that he probably had not examined it as carefully as he should have done. We discussed at length about an admission of a \$2,000.00 payment received from Mr. Goswick. I interrogated him relative to a deposit that was placed in the bank, as I remember, on the 31st day of December, 1927, of \$1900.00, showing at the time that the deposit was made that there was a \$100.00 withdrawal, that is, that there was \$1900.00 deposited and probably a hundred dollars that was placed in his pocket, indicating that this deposit was a check rather than cash. I interrogated him relative to that and his mind was hazy on it and was uncertain and thought that perhaps that was not correct but subsequently he looked up his deposit account and

(Testimony of W. W. McBride.)

then refreshed his memory and stated that this was \$2,000.00 which he had received from Mr. Goswick and that his book showed a deposit of \$1900.00. As to the deductions made in that income tax return—his own income tax return for depreciation on the Globe property—that was perhaps [280] discussed a little but very little, if any, and it rather appears to me that Judge Shute stated at that time that the girl in fixing—in preparing this return, decided that by splitting these various items, placing half on his and half on hers—I don't remember the purpose for which that was done but there was splitting of these various items between the two—between Mrs. Shute's return and his but I don't recall the exact reason why the girl made that division. I am referring now to a division of one-half of the depreciation on the Globe home property. And one-half of it was returned as community property. I called his attention to the fact that that appeared also in Mrs. Shute's return. I don't believe that in discussing that we went into detail and attempted to segregate the different items, except that there was merely a short discussion with respect to the fact that there was a division of this which they had regarded as community property, half on his and half on hers and, as I remember, that was the explanation but I don't just remember why he stated that it was there divided. There was no discussion between us of the income tax return for 1926 for the reason that I had not examined one. I knew nothing about what the 1926 or anything prior to this 1927 contained. Therefore, there was no mention of it. The same would apply to 1925 and anything prior to that time. There was a dis-

(Testimony of W. W. McBride.)

cussion in my interview with him in regard to the payment of a sum of \$10,000.00 to him by C. C. Julian. Judge Shute stated that a man by the name of either Landauer or Bandauer, who was an employee of C. C. Julian, came to him and solicited his influence in effecting a sale of certain mining stock by a certain party, whose name I don't remember, to C. C. Julian. In other words, Julian wanted to purchase this property and I assumed that Judge Shute was standing in an advantageous position to effect that sale and, therefore, Landauer or Bandauer, who is an employee of Julian, came to Judge Shute and solicited his support in influencing the other party to consent to [281] the sale and that the sale was effected; that Julian gave Judge Shute \$10,000.00, which \$10,000.00 was divided equally between him and Landauer. I could not tell you whether the money was paid in currency or otherwise. There was this issue that was raised but the only thing, probably, that was said with respect to that item was that there was a \$3,000.00 check paid to Mrs. Holmes, the mortgagee, on the Globe property, which could not hardly be accounted for from the bank records. In other words, it could not be determined where this \$3,000.00 was secured from. In other words, his earnings from the firm which had been deposited in the bank did not show that this amount had been withdrawn from that and I think, as I remember, it was with respect to that one point and then Judge Shute told the full story voluntarily without any further interrogation relative to that point, because I did not know the details of the transaction at all. That was the Ezra B.

(Testimony of W. W. McBride.)

Thayer deal with C. C. Julian. I don't remember as to whether I had information prior to this interview of \$3400.00 being deposited in the bank which was not accounted for through earnings from the firm and that deposit was in cash. Prior to the interview with Judge Shute I had had an interview with Wesley Goswick in regard to a contract existing between him and Judge Shute for the payment of money.

Mr. NEALON.—Q. I will ask you if you had any interview with Mr. Wedepohl of the A. E. England Motor Company about a Hudson car placed there by Judge Shute shortly prior to the bankruptcy?

A. Yes, sir.

Mr. MOORE.—We object to that question on the same ground, your Honor, unless it is shown that Judge Shute was present.

Mr. NEALON.—Now, this is a little different ground, if your Honor please.

The COURT.—You are assuming a fact in the question that has not been proven. [282]

Mr. NEALON.—What is that, your Honor?

The COURT.—I say, you assume a fact in your question which has not yet been proven.

Mr. NEALON.—Judge Shute has admitted that he put the car in England's place just prior to the bankruptcy. That appears in his testimony given before the referee.

The COURT.—Well, of course, you may be correct about that but any conversation alleged to have taken place between this witness and some third person would not be admissible in bankruptcy.

(Testimony of W. W. McBride.)

Mr. NEALON.—No, I am not trying to get that. What I was trying to find out if this witness had ascertained in any way from an employee of the company whereabouts in that building that car was placed.

The COURT.—If he saw the car, he may state.

Mr. NEALON.—What is it?

The COURT.—If he saw the car there, he may so state.

Mr. NEALON.—Q. You did not see the car?

A. No, the car was removed before this investigation was instituted.

The COURT.—How do you know that?

A. Just judging from the reading of the hearings before the referee in bankruptcy.

Mr. NEALON.—Q. You had read the testimony of Judge Shute prior to that time?

A. I had read all of the testimony of all the hearings that had been held prior to the time that the Government instituted this investigation.

Prior to the time that I went to see Judge Shute, I had an interview with Mr. Goswick, and prior to the time that I went to see Judge Shute, I had had an interview with Mr. Packard. I would say it was just about two or three days prior to my interview with Judge Shute. That might not be exact but it was very [283] shortly thereafter. I had a discussion with Judge Shute about the Hudson car being placed in the A. E. England Motor Company's place. He said it had been placed there. I don't believe Judge Shute told me in what part of the building it had been placed. I obtained the in-

(Testimony of W. W. McBride.)

formation but from another source. I did not, in my interview with Judge Shute, convey to him the information that I had obtained from Mr. Goswick in regard to this \$200,000.00 deal. I did not convey to him any information that I had gotten in regard to my interview with Mr. Packard. I did not know what impression I gave him but I did not tell him that I had such information.

Cross-examination by Mr. MOORE.

It seems to me that it was Clifford Matthews whom Judge Shute told me had been employed by Mrs. Shute to look after her affairs, and that Clifford Matthews, an attorney in Globe, had advised her to withdraw these funds from the bank. It is my impression that Judge Shute told me that he had bought that phonograph for Mrs. Shute for a Christmas present. In connection with the La Prade transaction covering the \$250.00, I think Judge Shute told me that Mr. La Prade had come to his office and introduced to him an old friend of La Prade's, whose honesty and integrity La Prade said he would vouch for, and which friend had some oil leases down in Louisiana, and that Judge Shute would get a fair run for his money. I think he told me that it subsequently developed that this friend, as a matter of fact, did not have any oil leases at all. My understanding was that La Prade felt that he had been the cause of him losing the \$250.00 and, in view of the fact he was now in difficulty he was coming back as a friend to his rescue—he felt some responsibility in returning the \$250.00. It was my understanding — impression that he handled the

(Testimony of W. W. McBride.)

transaction with regard to the Noble note himself, with the permission and consent [284] of Mrs. Shute. He told me it was paid out of the savings account, that is clear. The only thing was whether he paid it for her. I got the impression that he handled it as her agent. When we discussed the Goswick transaction or matter, he also told me of a previous contract which he had himself negotiated for the sale of the same property to some Ohio people, who were represented by Stalker and Bedford. As I remember, he stated that he had handled a transaction involving the sale of this same property at some time prior to the transaction between Goswick and L. E. Foster and that it was specifically provided in that that he was to receive 10% for his services but that they failed to exercise the option and, therefore, this transaction fell through. I don't remember that he also told me that the Stalker and Bedford people had expended a large sum of money in the construction of roads and building houses and installing machinery on the property, which was left on the property when they threw up the option. I remember that after Judge Shute started to relate the Julian transaction there was absolutely no interruption. He told the entire story in entirety, without being interrogated relative to that feature by me. As I remember, I was in doubt as to the origin of the \$3,000.00 check, that is, the source from which this \$3,000.00 check came, with which Judge Shute paid Mary Holmes, the mortgagee on the Globe property, and just immediately preceding that I interrogated him relative to that point. I interrogated him with refer-

(Testimony of W. W. McBride.)

ence to the source from which the \$3,000.00 came from and Judge Shute immediately thereafter told the entire story about the Julian transaction without interruption on my part. I had seen this \$3,000.00 item from the bank records. I am not clear as to whether I had also observed the \$3400.00 deposit from the bank's records. Mr. Nealon questioned me on that point and I don't remember. I examined the records both in the hands of the trustee and at the banking institution too. I examined all records that [285] was furnished them and also went to the bank personally and examined, at least in part, the records over there. The day that I went to the bank, there was one sheet that they could not find and they claimed they searched for two days for this sheet, which left a missing link, which made a discrepancy between the figures which I had prior thereto and the figures that I had had and they never did discover it. I went back and made inquiry about it and they claimed that apparently it had been misplaced and could not be found, so that I could not get any check between the two. I don't know whether that missing sheet was found among the records that Judge Shute furnished to the trustee. I never found it. I never seen that sheet but the bank, apparently, did not know what had become of it, because they stated that they had made diligent effort and had been unable to find the record of that particular sheet. I think probably the first suggestion with regard to the Goswick transaction came as the result of the hearings before the referee. I did not attend those hearings. I obtained it from the trustee in bankruptcy. I came over and made an examination of

(Testimony of W. W. McBride.)

it myself. I received absolutely no correspondence—no advance information prior to starting the investigation myself, with the exception of one short report that was made by a prior agent merely to the effect that Judge Shute had filed a petition in bankruptcy and filed his original schedule. I think, probably, after examining the hearing before the trustee, that I might have mentioned that transaction to Judge Nealon afterwards but, after making an investigation of it, there was no disclosure made with respect to any information I obtained, except with respect to one point upon which I first obtained prior approval from the Attorney General. That was treated as confidential information. I would say that, with the exception of just mentioning—just checking a little bit from the information obtained in the hearing before the referee in bankruptcy that I did not discuss it with Mr. Nealon [286] until after I had discussed it with Judge Shute, with that exception, because I knew nothing about the transaction, except what was shown therein.

Q. And you went to Judge Shute about it before you went to the trustee?

A. After I had made my investigation—

Q. I am speaking about after you had seen it in the records in the referee's office; to whom did you go first?

A. I think, probably, after obtaining that vague information, before I made my investigation on the point, that I did question Mr. Nealon with respect to that point.

(Testimony of W. W. McBride.)

Q. And Mr. Nealon at that time told you that he had discussed the matter with Judge Shute, did he not?

A. He did not. I don't believe that Mr. Nealon at that time had the detailed information on it. If he did, he did not furnish it to me.

Redirect Examination by Mr. NEALON.

Mr. Moore has mentioned about the Noble note having been paid from the savings fund. I examined the income tax return in regard to that feature, in 1927—I mean the deduction of that. It was deducted from Judge Shute's account, as a loss by him.

Mr. NEALON.—I want to introduce some exhibits, if your Honor please, I now offer the income tax return for the year 1925, the copy furnished me, and which, under the stipulation, as I understand it, Mr. Moore, was to be received as an original.

Mr. MOORE.—No objection.

Mr. NEALON.—Now, I will also offer this sheet, which contains the account for 1926 of G. W. Shute; also of Mrs. G. W. Shute.

Mr. MOORE.—No objection. [287]

Whereupon Creditor's Exhibits Nos. 17 and 18 were admitted in evidence without objection, as follows: [288]

CREDITOR'S EXHIBIT No. 17.

Form 1040.

INDIVIDUAL INCOME TAX RETURN.

For Calendar Year 1925.

G. W. Shute,

309 National Bank of Arizona Bldg.,

Phoenix, Maricopa (County) Arizona.

Occupation, Profession, or Kind of Business—
Lawyer.

1. Are you a citizen or resident of the United States? Yes.

2. If you filed a return for 1924, to what Collector's office was it sent? Phoenix, Arizona.

3. Is this a joint return of husband and wife? Yes.

* * * * *

5. Were you married and living with husband or wife on the last day of your taxable year? Yes.

* * * * *

7. If your status in respect to questions 5 and 6 changed during the year, state date of such change. Status unchanged. [289]

* * * * *

INCOME.

1. Salaries, Wages, Commissions, etc. . . . NONE

2. Net profit from Business or Profession.

(From Schedule A.) See 4 below . . . NONE

3. Interest on Bank Deposits, Corporation

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B.

1. Kind of Property ***	5. Cost ***	8. Amount of Depreciation Charged Off This Year
Frame Dwelling House at		
Globe rented	6500.00	325.00
Professional Library . . .	1400.00	140.00
[290]		

CREDITOR'S EXHIBIT No. 18.

Form 1040.

INDIVIDUAL INCOME TAX RETURN,
For Calendar Year 1926.

G. W. Shute,
309 N. Ba. Bldg.,
Phx.

1. Are you a citizen or resident of the United States? Yes.
2. If you filed a return for 1925, to what Collector's office was it sent? Phx., Ariz.
3. Is this a joint return of husband and wife? No.
4. State name of husband or wife if a separate return was made and the Collector's office where it was sent. Mrs. G. W. Shute, Phx., Ariz.
5. Were you married and living with husband or wife on the last day of your taxable year? Yes.

* * * * *

7. If your status in respect to questions 5 and 6

changed during the year, state date of such change. No.

8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support because mentally or physically defective were receiving their chief support from you on the last day of your taxable year? None.

INCOME.

* * * * *

4. Income from Partnerships,
Fiduciaries, etc. A. L. & K.
1/2 Community3897.78

* * * * *

9. Other Income (including dividends received on stock of foreign corporations) J.
W. Bandhauer—Ajo (1/2
Community)2500

* * * * *

10. Total Income in Items 1 to 96347.78

DEDUCTIONS.

11. Interest Paid172.13
12. Taxes Paid (Explain in
Schedule F.)97.80

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* * * * *

16. Other Deductions Authorized
by Law.

(a) Dep. on Professional

—10%.

(b) 280 volumes Cyc. 5.00

—\$1400140.00

17. Total Deductions in Items

11 to 16409.93

18. Net Income (Item 10 minus

Item 17)5937.85

COMPUTATION OF TAX.

19. Earned Net Income6347.78

20. Less Personal exemption and

Credit for Dependents (see

Instruction 20)3500

21. Balance (Item 19 minus 20).2847.78

22. Amount taxable at 1½% (not

over the first \$4000 of Item

21)2847.78

* * * * *

25. Normal Tax (1½% of Item

22)42.71

* * * * *

29. Tax on Earned Net Income

(total of Items 25, 26, 27,

and 28)42.71

30. Credit of 25% of Item 29

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES.

1. Kind of Property	2. Amount Received	** 5. Depreciation	6. Repairs	** 8. Net Profit
Dwelling house				
at Globe . . .	400.00	325.00	175.00	(100)
			½ Comm.	(50)
* * * * *				

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 12, 14, and 15.

Taxes

Co. Taxes—Gila Co.—152 60

Auto Taxes43

195 60—½Community 97.80

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B.

1. Kind of Property	*** 5. Cost	*** Amount of Depreciation 7. Previous Years	Charged Off 8. This Year
Dwelling house at			
Globe rented	6500	325	325
Professional Library	1400	140	140

Form 1040.

INDIVIDUAL INCOME TAX RETURN.

For Calendar Year 1926.

Mrs. G. W. Shute,
309 NBA. Bldg.,

* * * * *

4. Income from Partnerships,
Fiduciaries, etc. A. L. &
K. (1/2 Community)3897.77

5. Rents and Royalties (From
Schedule B.)(50-)

* * * * *

9. Other Income (including divi-
dends received on stock of
foreign corporations)
(a) J. W. Bandhauer (1/2
Community)2500

* * * * *

10. Total Income in Items 1 to 9 6347.77

DEDUCTIONS.

11. Interest Paid172.12

12. Taxes Paid (Explain in
Schedule F)97.80

* * * * *

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17. Total Deductions in Items
11 to 16 269.92

18. Net Income (Item 10 minus
Item 17) 6077.85

COMPUTATION OF TAX.

19.	Earned Net Income (not over \$20,000)	5000	
20.	Less Personal Exemption and Credit for Dependents (see Instruction 20)		

21.	Balance (Item 19 minus 20)...	5000	

22.	Amount taxable at 11½% (not over the first \$4,000 of Item 21)	4000	

23.	Amount taxable at 3% (not over the second \$4,000 of Item 21)	1000	

*	* * * * *		* * * * *
25.	Normal Tax (11½% of Item 22)	60	
26.	Normal Tax (3% of Item 23)..	30	

*	* * * * *		* * * * *
29.	Tax on Earned Net Income (total of Items 25, 26, 27, and 28)	90	

30.	Credit of 25% of Item 29 (not over 25% of Items 28, 42, 43, and 44)	22 50	

53. Balance of Tax (Item 50
minus Items 51 and 52) . . . 99 84

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It was then stipulated that copies of income tax returns for the year 1927 which were attached to testimony of the bankrupt given in the Referee's Court were admitted in evidence as originals.

Thereupon Creditor's Exhibit No. 19 was admitted in evidence without objection, as follows:
[296]

CREDITOR'S EXHIBIT No. 19.

Phoenix, Arizona, Dec. 3, 1927. No. 548.

G. W. Shute—Pay to the order of A. E. Eng-
land \$995.00.

Nine Hundred Ninety-five no/100 Dollars.

G. W. SHUTE.

(Back)

Pay to the Order of THE NATIONAL BANK
OF ARIZONA, Phoenix, Arizona.

A. E. ENGLAND.

(Perforated)

(Rubber Stamp)

The National Bank

1

Jan. 3, 1928

of Arizona.

Thereupon Creditor's Exhibit No. 20 was admitted in evidence without objection, as follows:

CREDITOR'S EXHIBIT No. 20.

Phoenix, Arizona, Dec. 19, 1927. No. 545.

G. W. Shute—Pay to the order of Arthur La Prade \$250.00.
Two Hundred fifty no/100 Dollars.

G. W. SHUTE.

(Back)

Pay to Arthur T. La Prade, Trustee a/c only.

ARTHUR T. La PRADE.

By G. W. CORNELIUS.

[297]

(Rubber Stamp)

The Valley Bank,

Phoenix, Ariz.

Through Clearings

Dec. 21, 1927.

(Perforated.)

Thereupon Creditor's Exhibit No. 21 was admitted in evidence without objection, as follows:

CREDITOR'S EXHIBIT No. 21.

ARTICLES OF CO-PARTNERSHIP.

THIS AGREEMENT made this 2nd day of May, 1927, by and between THOS. ARMSTRONG, JR., R. WM. KRAMER, JAMES R. MOORE and G. W. SHUTE and ROBERT H. ARMSTRONG, all of Phoenix, Arizona,

WITNESSETH:

WHEREAS, the parties to this agreement have, with the late Judge Lewis, been for some years

past engaged as partners in the practice of law in Phoenix, Arizona, under the firm name of ARMSTRONG, LEWIS & KRAMER, which co-partnership has recently been dissolved by the death of Judge Lewis, and

WHEREAS, the parties hereto are desirous of continuing such law practice as partners,

Now for the purpose of specifically defining the powers, obligations, rights and duties of each of said partners, and reducing to written form all the agreements of the parties in relation to the matter, it is now, by the parties hereto, agreed as follows:

I.

From and after April 1, 1927, and until December 31, 1932, or so much longer as the parties may agree, each and all of the parties shall be and continue to be co-partners in the practice of law with their principal offices in the City of Phoenix, Arizona, and each will devote his entire time, skill and service to the business of the partnership except that THOS. [298] ARMSTRONG, JR., shall be obliged to give thereto only such time and service as he may elect, but will not engage in the practice of law otherwise than as a member of the partnership during its continuance.

It is expressly understood that R. WM. KRAMER is not expected to do, and is exempted from doing any work for or on behalf of the firm outside the usual office hours.

II.

The Firm Name of the said partnership shall be ARMSTRONG, LEWIS & KRAMER.

III.

Each partner shall furnish for the use of the partnership, his own law library in the office of the firm; such library to remain the property of the partner now owning and furnishing the same. As compensation for the use of the library furnished by each partner, the partnership shall purchase with partnership funds all new volumes of sets of reports such as the West Publishing Company Reporter System, United States Reports, Annotated Sets—Cyclopedias and Digests and additions and supplements to textbooks, as well as annotations which, when purchased, shall become and remain the property of the partner owning the Base set of Books. The partnership shall purchase for the use of the partnership to be and remain partnership property, such additional textbooks, reports, etc., as may, from time to time, be advantageous. So long as the library of Judge Lewis shall remain in the office for the use of the firm, it shall be kept up as though he were still a member of the firm.

IV.

As to the office furniture and fixtures in the present offices of the firm, of which $23\frac{1}{3}\%$ is owned by the Estate of the late Judge Lewis,—the same being carried on the old firm books as \$5,127.59, as of April 1, 1927, and which should be [299] depre-

ciated 25% to arrive at approximately the true value, and therefore of the present value of \$3,845.-74. The interest of the Estate of Judge Lewis therein is \$897.33. It is agreed that the said interest of Judge Lewis' Estate shall be purchased by the present firm, the members contributing thereto as follows: Thos. Armstrong, Jr., 30% or \$269.20, R. Wm. Kramer, 30% or \$269.20, James R. Moore 20% or \$179.47 and G. W. Shute 20% or \$179.47, and thereafter the furniture and fixtures of the present firm will be owned in the following proportions: Thos. Armstrong, Jr., 30%, R. Wm. Kramer, 30%, James R. Moore, 20% and G. W. Shute 20% thereof, and will be so divided on dissolution of the present firm with the right to the survivors or remaining members of the firm to purchase the interest of the retiring member therein, and such retiring member, his administrator or executor will withdraw his library including additions thereto, purchased with partnership funds pursuant to Article III hereof.

V.

The expense of carrying on the business of the co-partnership shall be paid out of the gross earnings.

VI.

The new firm will assume and pay all expenses of the old firm, and in accordance with the Articles of Co-partnership of the old firm, the new firm will continue to conclusion all business commenced prior to April 1, 1927, and collect the earnings therefrom,

and will apportion and distribute the net proceeds thereof from time to time as follows: to Ethel O. Lewis, executrix of the Will of Ernest W. Lewis, 36% thereof, to R. Wm. Kramer 24% thereof, to James R. Moore 15% thereof, to G. W. Shute 15% thereof, and to Thos. Armstrong, Jr., 10% thereof, as provided in the Articles of Co-partnership of the old firm. Such net proceeds will be ascertained by deducting from the gross amounts collected from such business, a proportional expense of [300] carrying on the business from month to month, and such proportion will be ascertained by comparing the monthly collection of cash going to the old firm and that going to the new firm, each firm bearing its proportion of the expenses of carrying on the business based upon the amount of cash collected by each.

VII.

The net earnings of the new firm shall be paid and divided as follows: To R. Wm. Kramer 33%, to James R. Moore 25%, to G. W. Shute 25%, and to Thos. Armstrong, Jr., 17%. Division and payment of the net earnings shall be made monthly or whenever there shall be on hand \$1,000.00 or more of the net earnings, not required for the payment of the current month's expenses. It will be the policy of the firm, however, to keep its cash balance in the bank up to at least \$1,000 at all times, except that on December 31st of each year the entire net cash balance will be distributed as partnership earnings.

VIII.

A bank account shall be kept in the firm name in the First National Bank of Arizona in which there shall be deposited daily all cash, drafts and checks collected or received on firm account. All withdrawals from the bank shall be made by checks signed by the bookkeeper or cashier for the firm in the firm name and countersigned by a member of the firm. All firm checks shall be consecutively numbered and stubs kept showing date, amount and to whom issued. A bookkeeper shall be employed who shall keep the books of the firm, and the books shall be so kept as to show earnings and expenses, and cash received and disbursed; which account shall be balanced daily, as shall be all credits and charges of clients. The firm's assets and credits shall not be used by any partner for private purposes.

IX.

In case of any disagreement between the members of the [301] firm, as to firm policy, charges for services or any other matter connected with the firm business, the same shall be referred for settlement to Thos. Armstrong, Jr., whose decision thereon shall be final and binding. In the absence of Mr. Armstrong, such reference shall be made to R. Wm. Kramer.

X.

On the death, permanent disability or voluntary withdrawal of either Thos. Armstrong, Jr., R. Wm. Kramer, James R. Moore or G. W. Shute, he or his executor or administrator shall be entitled to have

and receive his percentage of the net earnings of the firm made and earned up to the time of such death, disability or voluntary withdrawal, as shown on the books of the firm, to be paid as the same are collected by the remaining members of the firm. Retainers to be considered as earnings. Any property belonging to the firm shall, on dissolution, be divided as follows: 30% to Thos. Armstrong, Jr., 30% to R. Wm. Kramer, 20% to James R. Moore and 20% to G. W. Shute with the right of the survivors to purchase the interest of the retiring member at its then cash value.

XI.

Robert H. Armstrong is admitted to partnership in the firm, but so long as he continues his employment as assistant County Attorney, he shall receive only a salary of \$100 per month. In case of his death or permanent disability, neither he nor his administrator shall be entitled to any share or interest in the firm, or its property, or its earnings collected after the time of such death, disability or withdrawal. He shall not be required to contribute to or keep up the library for the use of the firm.

This agreement shall be binding upon the parties hereto their heirs, executors and administrators.

IN WITNESS WHEREOF we set our hands this 2d of May, 1927. [302]

THOS. ARMSTRONG, Jr.

R. WM. KRAMER.

JAMES R. MOORE.

G. W. SHUTE.

ROBERT H. ARMSTRONG. [303]

Thereupon Creditor's Exhibit No. 22 was admitted in evidence without objection, as follows: [304]

CREDITOR'S EXHIBIT No. 22.

MODIFICATION OF PARTNERSHIP AGREEMENT.

The partnership agreement of Armstrong, Lewis & Kramer dated as of January 1, 1924, as modified on the 17th day of December, 1924, is hereby further modified and amended, as of January 1st, 1924, as follows:

Article III to read as follows:

Each partner shall furnish for the use of the partnership his own library at the office of the firm, said library to remain the property of the partner now owning and furnishing the same. As compensation for the use of the library furnished by each partner, the partnership shall purchase with partnership funds all new volumes of sets of reports, such as the West Publishing Company's Reporter system, United States Reports, and additions and supplements to text books, as well as annotations, which when purchased shall become and remain the property of the partner owning the base set of books. The partnership shall purchase for the use of the partnership, to be and remain partnership property, such additional text books, reports, etc., as may from time to time be deemed advantageous.

Article IV to read as follows:

The office furniture and fixtures in the present

offices of the firm are the property of Armstrong, Lewis & Kramer in [305] equal shares, and are of the value of Three Thousand Dollars (\$3,000.00). The incoming partners, Moore and Shute, will each pay to said Armstrong, Lewis & Kramer, fifteen per cent (15%) of such value, and thereafter all office furniture and fixtures and additions thereto will be the property of all the partners in the following named proportions:

Thos. Armstrong, Jr., twenty-three and one-third per cent ($23\frac{1}{3}\%$); Ernest W. Lewis, twenty-three and one-third per cent ($23\frac{1}{3}\%$); R. Wm. Kramer, twenty-three and one-third per cent ($23\frac{1}{3}\%$); James R. Moore, fifteen per cent (15%); G. W. Shute fifteen per cent (15%).

The fourth paragraph of Article X to read as follows:

Any physical property belonging to the firm shall on dissolution be divided, twenty-three and one-third per cent ($23\frac{1}{3}\%$) to Thos. Armstrong, Jr., twenty-three and one-third per cent ($23\frac{1}{3}\%$) to Ernest W. Lewis, twenty-three and one-third per cent ($23\frac{1}{3}\%$) to R. Wm. Kramer, fifteen per cent (15%) to James R. Moore, and fifteen per cent (15%) to G. W. Shute; with the right to the survivors to purchase the interest of the retiring member at a reasonable value; and such member or his administrator or executor, will then withdraw his own library, including the additions thereto purchased with partnership funds pursuant to the provisions of Article III as amended.

Otherwise the original Articles of Copartnership dated as of January 1st, 1924, as modified on December 17, 1924, are continued in full force and effect.

Dated this 1st day of July, 1925.

THOS. ARMSTRONG, Jr.

ERNEST W. LEWIS.

R. WM. KRAMER.

JAMES R. MOORE.

G. W. SHUTE. [306]

(Lead pencil writing:) Armstrong & probably other members of firm have signed copies.

PARTNERSHIP AGREEMENT.

This Agreement made as of the 1st day of January, 1924, by and between Thos. Armstrong, Jr., E. W. Lewis, R. W. Kramer, James R. Moore and G. W. Shute, all of Phoenix, Arizona,

WITNESSETH:

WHEREAS, said Armstrong, Lewis and Kramer have been for many years, and are now, engaged in the practice of law as copartners, at Phoenix, Arizona, and intend to so continue, and the said James R. Moore and G. W. Shute are desirous of being associated with the said Armstrong, Lewis and Kramer as copartners in such business from and after this date, and such association has been agreed upon by all the parties hereto;

NOW, for the purpose of specifically defining the powers, obligations, rights and duties of each of said partners, and reducing to written form all of

the agreements of the parties in relation to the matter, it is now by all the parties hereto agreed as follows:

I.

From and after this date and for the term of five (5) years, or so much longer as the parties may agree, each and all the parties *ahll* be and continue to be copartners in the practice of law with their principal office in the City of Phoenix, Arizona, and each will devote his entire time, skill and service to the business of the partnership except that Thos. Armstrong, Jr., shall be obliged to give thereto only such time and [307] services as he may elect, but will not engage in the practice of law otherwise than as a member of the partnership during its continuance; and provided further, that no member of the firm voluntarily withdrawing therefrom will engage in the practice of law at any place in Maricopa County, Arizona, at any time prior to January 1st, 1929.

II.

The firm name of said partnership shall be Armstrong, Lewis & Kramer.

III.

Each partner shall furnish and keep up for the use of the partnership his own law library at the office of the firm. Each partner will purchase and add to his library from time to time such law books as the firm business may seem to require, and each will, as nearly as possible, make additions to his library equal in value to his proportionate part of

the distributive earnings of the firm. Equalization of library expenditures will be made between the partners at the expiration of each year on this basis.

IV.

The office furniture and fixtures in the present offices of the firm are the property of said Armstrong, said Lewis and said Kramer in equal shares and are of the value of Three Thousand Dollars (\$3000.00). The incoming partners, said Moore and Shute, will each pay on or before — 1924, to said Armstrong, Lewis and Kramer, one-eighth of such value, and thereafter all office furniture and fixtures and additions thereto will be the property of all the partners in the following named proportions:

Thos. Armstrong, Jr., E. W. Lewis and R. W. Kramer jointly, three-quarters ($\frac{3}{4}$) thereof, James R. Moore one-eighth ($\frac{1}{8}$) thereof, and G. W. Shute one-eighth ($\frac{1}{8}$) thereof, and G. W. Shute one-eighth ($\frac{1}{8}$) thereof. [308]

V.

The expense of carrying on the business shall be paid out of the gross earnings.

VI.

The net earnings of the partnership shall be paid and divided as follows:

Thos. Armstrong, Jr.,	18%
E. W. Lewis	33%
R. W. Kramer	24%
James R. Moore	12½%
G. W. Shute	12½%

Division and payment of the net earnings shall be made monthly or whenever there shall be on hand One Thousand Dollars (\$1000.00), or more, or net earnings not required for the payment of the current month's expenses; it will be the policy of the firm, however, to keep its cash balance in the bank up to at least One Thousand Dollars (\$1,000.00) at all times, except that on December 31st of each year the entire net cash balance will be distributed as partnership earnings.

VII.

A bank account shall be kept in the firm name in the National Bank of Arizona in which there shall be deposited daily all cash, drafts and checks collected or received on firm account. All withdrawals from the bank shall be made by checks signed by the bookkeeper or cashier for the firm in the firm name, and countersigned by a member of the firm. All firm checks shall be consecutively numbered and stubs kept showing date, amount and to whom issued. A bookkeeper shall be employed who shall keep the books of account of the firm, and the books shall be so kept as to show earnings and expenses and an account of cash received and distributed, which account shall be balanced daily as shall also be all charges and credits of clients.

VIII.

The firm assets and credit shall not be used by any [309] partner for private purposes.

IX.

In case of any disagreement between the members of the firm as to firm policy, charges for services, acceptance or rejection of employment by clients, or other matters connected with the firm business, the same shall be referred for settlement to Thos. Armstrong, Jr., whose decision thereon shall be final and binding. In the absence of Mr. Armstrong such reference shall be made to E. W. Lewis.

X.

The new firm will assume and pay all the obligations of the old firm.

All earnings of the old firm of Armstrong, Lewis & Kramer collected or received after January 1st, 1924, shall be regarded as earnings of the new firm and treated and distributed accordingly. In view of this provision and of the fact that neither the said James R. Moore nor G. W. Shute have contributed to such earnings uncollected at said last-mentioned date, then on dissolution of this new firm by the expiration of this agreement or by the withdrawal, disability or death of either said Moore or said Shute, neither said Moore nor said Shute, nor his heirs, executors or administrators shall be entitled to participate in the distribution or division of any firm earnings thereafter collected for services theretofore or thereafter rendered.

As to the other members of the firm, to-wit, Armstrong, Lewis and Kramer, the partnership shall on the death or permanent disability of either thereof, be continued by the surviving partners and all

pending business conducted to a conclusion and all moneys due or to become due as shown by the books of the partnership, or as may thereafter become due by reason of the further conduct of such pending business, after paying all obligations of the firm to the date of such disability or dissolution [310] and a reasonable portion of the overhead expenses incident to the further conduct of such pending business, the net proceeds shall be paid and distributed to said firm members last named, or to their representatives, in the same proportion as though no disability or dissolution had occurred.

Any physical property belonging to the firm shall on dissolution be divided one-fourth ($\frac{1}{4}$) to Thos. Armstrong, Jr., one-fourth ($\frac{1}{4}$) to E. W. Lewis, one-fourth ($\frac{1}{4}$) to R. W. Kramer, one-eighth ($\frac{1}{8}$) to James R. Moore, one-eighth ($\frac{1}{8}$) to G. W. Shute, with the right to the survivors to purchase the interest of the retiring member at a reasonable value, and each member or his administrator or executor, may then withdraw his own library.

This agreement shall be binding upon the parties hereto, their heirs, executors and administrators.

IN WITNESS WHEREOF the parties hereto have set their hands this 27th day of December, 1923.

THOS. ARMSTRONG, Jr.

ERNEST W. LEWIS.

R. WM. KRAMER.

JAMES R. MOORE.

G. W. SHUTE.

(Following in lead pencil handwriting:) Armstrong and probably other members of firm have signed copies. GWS. (?) [311]

Thereupon Creditor's Exhibit No. 23 was admitted in evidence without objection, as follows: [312]

CREDITOR'S EXHIBIT No. 23.

MODIFICATION OF PARTNERSHIP AGREEMENT.

The partnership agreement of Armstrong, Lewis & Kramer dated as of January 1, 1924, is hereby modified and amended as follows, to take effect on January 1, 1925:

Add to Article I:

It is expressly understood that R. Wm. Kramer is not expected to do, and is exempt from doing, any work for or on behalf of the firm outside usual office hours.

It will be the policy of the firm to close its offices at One P. M. on Saturday.

Article VI is hereby amended to read as follows:

The net earnings of the partnership shall be paid and divided as follows:

Thos. Armstrong, Jr., ten per cent.

Ernest W. Lewis, forty per cent.

R. Wm. Kramer, twenty per cent.

James R. Moore, fifteen per cent.

G. W. Shute, fifteen per cent.

It being understood that in case said Thos. Armstrong, Jr., shall relinquish his present employment

as president of The National Bank of Arizona the percentage of earnings for distribution to each of the partners will be restored as in the articles of Januray 1, 1924.

There is added to Article X the following:

Robert H. Armstrong is admitted to partnership in the [313] firm but for the present on a salary basis of Two Hundred Twenty-five Dollars (\$225.00) per month. In case of his death, withdrawal or permanent disability neither he nor his executors or administrators shall be entitled to any share or interest in the firm or its property or its earnings collected after the time of such death, disability or withdrawal. He shall not be required to contribute to, or keep up, the library for the use of the firm.

Otherwise the original articles of copartnership dated as of January 1st, 1924, will be continued in full force and effect.

Dated this 17th day of December, 1924.

THOS. ARMSTRONG, Jr.

ERNEST W. LEWIS.

R. WM. KRAMER.

JAMES R. MOORE.

G. W. SHUTE.

ROBERT H. ARMSTRONG.

(Following in lead pencil handwriting:) On Jany. 1, 1926, Kramer and made a (word not readable) agreement whereby I took 36% and Kramer 24% otherwise no change. GWS.(?) [314]

Thereupon Creditor's Exhibit No. 24 was admitted in evidence as follows: [315]

CREDITOR'S EXHIBIT No. 24.

Dividend of A. L. & K. to Geo. W. Shute.

1923	\$400 per mo. except Dec.		
	when	\$600.00	\$5,000.00
1924	January 15	450.00	
	February 1	375.00	
	March 7	437.50	
	April 2	250.00	
	April 16	375.00	
	April 23	250.00	
	May 10	375.00	
	May 21	750.00	
	June 17	220.00	
	July 9	225.00	
	July 24	150.00	
	August 18	525.00	
	September 16	300.00	
	October 3	187.50	
	October 21	300.00	
	November 5	225.00	
	November 10	150.00	
	December 12	287.50	
	December 23	150.00	
	December 31	352.45	6,339.95
	[316]	<hr/>	
1925	January 12	450.00	
	February 2	300.00	
	February 11	750.00	
	March 5	300.00	
	March 19	225.00	

1925	April 13	375.00	
	April 20	225.00	
	April 24	450.00	
	May 11	270.00	
	May 25	450.00	
	June 30	600.00	
	July 13	150.00	
	July 30	150.00	
	September 9	450.00	
	October 8	300.00	
	October 26	150.00	
	November 4	375.00	
	December 12	450.00	
	December 31	319.14	6,739.14
1926	January 16	180.00	
	February 6	750.00	
	February 24	225.00	
	March 9	225.00	
	March 26	900.00	
	April 23	450.00	
	April 27	300.00	
	May 24	300.00	
	May 29	300.00	
	June 17	450.00	
	July 13	375.00	
	August 16	225.00	
	[317]		
	August 27	300.00	
	September 21	675.00	
	October 11	750.00	
	November 15	300.00	
	November 22	(Torn off)	

1926	December 14	225.00	
	December 23	370.00	
	December 31	222.45	7,827.45
		<hr/>	
1927	January 3	825.00	
	January 21	750.00	
	February 16	450.00	
	March 8	450.00	
	April 11	675.00	
	April 27	450.00	
	June 6	6,000.00	
	June 9	300.00	
	July 6	875.00	
	July 21	675.00	
	October 3	500.00	
	October 25	500.00	
	November 8	375.00	
	November 15	400.00	
	November 25	825.00	
	December 19	750.00	
	December 31	450.20	15,250.20
		<hr/>	
1928	January 26	300.00	
	February 16	750.00	
	March 14	625.00	
	April 10	775.00	2,450.00
		<hr/>	
			<hr/>
			\$43,606.74

[318]

Mr. NEALON.—Now, may it be stipulated that no books of account were kept by Judge Shute

showing resources—I mean receipts and disbursements and his business transactions?

Mr. MOORE.—No, we won't admit that, Judge Nealon.

Mr. NEALON.—Well, I think it is proven by the record anyway.

The COURT.—What you mean by that is that he did not keep a regular set of books?

Mr. NEALON.—That is what I mean. Nothing that will show his complete income or his complete business transactions. In other words, this is the point, if your Honor please; there are several sources of large income that are not shown anywhere in the records furnished to us at all, nor do the stubs and check books—the stubs and the checks show the purpose for which checks were drawn. As an illustration, the \$5,000.00 just testified to shows nowhere in any record.

The COURT.—What \$5,000.00 do you refer to?

Mr. NEALON.—The \$5,000.00 paid by Julian or the \$10,000.00, rather, and the disbursement of the \$5,000.00 back to Bandauer. Neither does the payment of the \$8,000.00. show anywhere. There are other items of the same kind and the testimony of Judge Shute is—on file is that he cannot account for that for a good many items.

Mr. MOORE.—Cannot account for what, Judge Nealon?

Mr. NEALON.—For the different items which he is questioned about in regard to his receipts and disbursements.

Mr. LEWIS.—Mr. Nealon, I believe that you recall at the last meeting of creditors that he submitted a fairly comprehensive statement covering all receipts and disbursements which—just a moment, please—which was made up from the checks, stubs, the Armstrong, Lewis & Kramer sheets, information from the bank and the bank statements. Now, that was made up in a very reasonable time after those sheets were obtained from you. I will admit that [319] it was not handed to you prior to the date of filing specifications. However, it was made from information which was in your possession at that time.

Mr. NEALON.—Well, sources of information are shown in Judge Shute's testimony in regard to that but that is not yet in evidence.

Mr. LEWIS.—No, but at the same time—

Mr. NEALON.—My contention on that is, if your Honor please, when it comes up, that that is not a statement of or explanation of the disposition of the assets. In other words, it is more a statement of the nature of the bank account and from such outside sources of information as Mr. Lewis was able to obtain and which Judge Shute was able to obtain, all of which appears in the transcript of December 27, wasn't it?

Mr. LEWIS.—Yes, and exhibits.

Mr. NEALON.—Now, I have here everything that has been furnished me in regard to the keeping of any records of any kind, merely bank statements, stubs, original checks and bank account. Many stubs and checks are missing in this. The

matter is not complete and I don't think that it can be considered as even an attempt to comply with the requirement of the statute as to the keeping of books or to the accounting either but I am willing to have this introduced in evidence for what it is worth, as one exhibit.

Mr. MOORE.—What is the purpose of it, may I ask, Judge Nealon?

The COURT.—The charge is he is not entitled to a discharge because he did not keep books as required by the statute. That is a matter to be considered by the court, when it comes.

Mr. MOORE.—Of course, that applies to a business man who did not keep books, for the purpose of concealing his assets. I don't know of any lawyer who keeps any books of what he does with money after he gets it. I know I never have.

The COURT.—No. There may be lawyers who do that. I don't [320] know.

Mr. NEALON.—Then, I offer it as the only records furnished me in this case.

Mr. MOORE.—We object to that, the *only furnished* you. It does not show that he did not keep books. As I understand it, you are furnishing what you have there to show that he did not keep any books?

Mr. NEALON.—That is the exact purpose of it. Now, we offer all that has been furnished. I think you will concede that, Mr. Lewis. You have checked these books.

Mr. LEWIS.—If there is any mistake in them,

we will check them over. As far as all of the checks being there and all that, I believe that is correct. In fact, there is more there—

Mr. NEALON.— —than you did furnish.

Mr. LEWIS.—That really should be, due to the fact that some Armstrong, Lewis & Kramer checks are there.

The COURT.—I think that is true. All that you wish to show now is that this bankrupt did not keep a set of books, as required by the statute?

Mr. NEALON.—Yes, sir.

The COURT.—And did not keep a set of books so complete and perfect as to show all of his assets and his liabilities?

Mr. NEALON.—Yes, sir.

The COURT.—His income and what he expended?

Mr. NEALON.—And his business transactions of 1926 that the amendment speaks of.

The COURT.—There is no pretension that he did keep such a set of books?

Mr. MOORE.—Oh, no.

The COURT.—You do not have to introduce all of that stuff.

Mr. MOORE.—We won't say that he did not keep it in accordance with the statute. [321]

The COURT.—I don't believe that you will admit that. I am saying that his position is that the bankrupt did not keep the set of books—a set of books which will show his income and his expenses, his assets and his liabilities.

Mr. MOORE.—Show the source of his income and the purpose of each expenditure. Those books were not kept.

It was thereupon stipulated by counsel that Mr. England's testimony heretofore given before the referee would be considered as admitted, it being apparent that he was too ill to attend the trial.

It was thereupon stipulated by counsel that copies of the Creed and Noble notes might be substituted for the originals and introduced in evidence, the same being numbered Creditor's Exhibits Nos. 25 and 26, and being as follows: [322]

CREDITOR'S EXHIBIT No. 25.

Collat.

Phoenix, Arizona, October 18, 1927.

For value received I promise to pay to the order of

The National Bank of Arizona at Phoenix
At its banking house at Phoenix, Arizona, the sum
of: Twelve HundredDollars,
in installments as follows:

Fifty (\$50.00) Dollars or more December 1,
1927.

Fifty (\$50.00) Dollars or more on the first day
of each and every month thereafter until the entire
sum of \$1200.00 shall have been paid.

All with interest from *dae* until paid, at the rate
of 8 per cent, per annum, interest payable quarterly,
Failure to pay any installment or to make any

interest payment as and when the same is herein promised to be paid, shall render all installments hereof immediately due and payable at the option of the holder thereof. Should this note be placed in the hands of an attorney for collection, I promise to pay ten (10) per cent additional hereon as attorney's fees. The makers and endorsers hereby waive demand, protest and notice of non-payment.

Principal and interest payable in gold coin of the United States of America.

Address: ~~305 Heard Bldg.~~ JOSEPH E. NOBLE.

Address: 762 East Culver, See C. T. W.

No. 15693. Due 11-1-29. JAN. 4—1928 L 2.
9.

(Back)

G. W. Shute.

Paid by G. W. Shute.

Feb. 27, 1928.

(Circular rubber stamp—paid Feb. 27, 1928.) [323]

CREDITOR'S EXHIBIT No. 26.

No. ———.

Phoenix, Arizona, April 14, 1928.

On or before three years after date, for value received we promise to pay to the order of JESSIE M. SHUTE the sum of ONE THOUSAND FIVE HUNDRED (\$1500.00) Dollars, with interest at the rate of six per cent per annum from date until paid. Interest payable every three months, and if not so paid to be added to the principal and become a part thereof and to bear interest at the same rate. ~~And should the interest not be paid when due then~~

(Testimony of Wesley Goswick.)

the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in Gold Coin of the United States of America at

LESLIE H. CREED.

VIRGINIA S. CREED.

\$1500.00 due April 14, 1931.

(Back.)

Interest to July 14. \$22.50.

Interest to Nov. 14. \$22.00.

The trustee and objecting creditor then rested, whereupon testimony was given for the bankrupt as follows: [324]

TESTIMONY OF WESLEY GOSWICK, FOR
THE BANKRUPT.

(Witness for the Bankrupt.)

(Examination by Mr. MOORE.)

My name is Wesley Goswick. I live at Payson part of the time. I have lived up in the Tonto Country thirty or thirty-five or seven years. I know Walter Shute. I have known him ever since I have been in the country. I knew him when he was a boy. I have spent practically all of my time in Arizona up in the Tonto Country around Globe. Some time, say in 1924, I located some cinnabar claims up in the Tonto. They were located in my name. Nobody had an interest in those claims besides me. Mr. Packard had an interest in the proceeds that I might have received from the sale

(Testimony of Wesley Goswick.)

of those claims. I told him that I would whack up with him but he was not on the papers at all. Mr. Packard is my son-in-law. Judge Shute did not have an interest in those claims. I recall an option that I gave on those claims along in 1925 or 24 to Bedford and Stalker. Mr. Shute negotiated that sale to Bedford and Stalker for me. I had an agreement with Shute that he was to receive a commission for negotiating that sale. I told him I would give him 10%. I have not the option agreement. The price for which I sold the claims was a hundred thousand dollars. Under the terms of the option, they were to do certain work and install certain machinery on the property. They went into possession of the property under the terms of the option. The first payment that they made was \$5,000.00. They must have spent \$75,000.00, at least, on the property. It was expended for roads and development of the mine and building the camp. Lots of things. And installation of machinery. Under the terms of that option, in the event they forfeited it, they would have to leave their improvements and their machinery on the premises. They forfeited the option. Everything they had stayed right there. That was along in the fall in October, 1926, I believe. When they forfeited the option, they left a compressor and they left a lot of piping and they left a lot of drills and they left seventeen houses and 62,000 feet of lumber and four or five hundred dollars worth of chuck and a lot of other stuff on the property. It had cost them \$35,000.00 to

(Testimony of Wesley Goswick.)

[325] put a road to the property. They never made but the one payment of \$5,000.00. I paid Judge Shute 10% of that \$5,000.00. I paid Bill Packard \$2500.00. I guess he paid Judge Shute \$2500.00 from the \$2,000.00. I don't know about that. I paid Judge Shute \$250.00 from that first payment. After Bedford and his associates had forfeited their option, they were moving machinery off and, as soon as I heard about it, I went down to stop them and took charge of it myself.

The next thing that was done with reference to a sale was that I turned it to Mr. Foster—L. E. Foster of Silver City. I made a trade with him. The terms of that option—the purchase price was \$200,000. I believe it was dated the 8th day of December, 1926, but I just don't remember the date. The first payment under that was \$5,000.00. What took place when I was at Globe about the 8th day of December relative to signing the papers on the Foster option was this: Me and Mr. Foster went to town with the papers, and I was up in the Clerk's office in the courthouse, and Walter walked in and I sez, "Here is the man I want to see now," and he come over there and I showed him the option and he looked at it, and we went on up to the Globe Hotel where Foster was in a room, and talked with him about it. We went right ahead, and that was about all that was done. The judge looked at it—looked at the papers. Prior to the 8th of December, if that is the date I have been speaking about, I

(Testimony of Wesley Goswick.)

had not talked to Judge Shute about the deal with Foster. He never knowed there was a deal up. I did not give Judge Shute any portion of [326] the \$5,000 that was paid by Foster at the time the papers were executed. The next payment was \$10,000, due in six months, and that was made. I did not give Judge Shute any portion of that \$10,000 payment. I give him some money along, but I never give it to him on no 10% or nothing of that kind. I give him some money about the time that payment was made. I don't recall just what date. I think I sent him a check. The next payment was made on the 8th of June, 1928, and was \$20,000. No, that is a mistake, as you say. The next payment of \$20,000 was the 8th of December, 1927. That is right. On or about the time that payment was made I gave Judge Shute \$2,000. The next payment was approximately \$80,000, on the 8th of June, 1928, and I give Judge Shute some money along about that time. I give him \$8,000. I delivered that money to him in town—the town of Globe. I give him the cash. The reason I happened to have that cash, \$8,000, in my possession, I brought it out to buy the Bar X Cow Ranch at Pleasant Valley and we just got back. I just got there when I met the judge going over across the street. I don't know how long before that I had drawn the money from the bank. It might be something like a week or ten days. I had taken that money up to buy a cow ranch, the first payment on it, and the deal did not go through. When

(Testimony of Wesley Goswick.)

I got there the boy had done sold it—McFadden boy, and I returned to Globe the day I met Judge Shute. To explain why I gave Judge Shute these sums of money—\$1,000—\$2,000 and the \$8,000—I thought he needed it and he was a friend of mine. Judge Shute and I have been in mining deals together. He has grubstaked me. You might call it grubstaking or something. He got up all of the money and I worked and he hired a man and put with me. That grubstaking continued while I was working on that property on the Reservation. That is not the cinnabar property. That has been six or seven years ago that we worked on the Reservation. It was before Judge Shute came to Phoenix. The [327] judge was living in Globe then and was still on the bench. Judge Shute and I have always been friends so far as I know. At least I have with him, and he acted like he was a friend of me. If I wanted any money I could get it if he had it. He was always willing to help me out in any way he could. I never asked him for a favor that I didn't get it. He has not come to my rescue in time of trouble, for I have never been in trouble. He sure has assisted me in years past when I have been in financial distress, you bet. I never did promise Judge Shute that I would give him a nickel out of the proceeds of this sale to Foster and his associates of this cinnabar property, and he never did ask me. A short time after the Foster deal, some trouble arose between Mr. Packard and me over the title to this property. Mr. Packard is my

(Testimony of Wesley Goswick.)

son-in-law. He demanded a half interest in the claims and wanted me to execute a deed to him for the half interest. I don't think Mr. Packard was entitled to a deed for a half interest in the property. Our entire misunderstanding was as to whether or not I would execute a deed to a half interest in the property. That dispute might have become very serious. It might have got to be pretty rough. I think Judge Shute was a friend of the Packard family, as well as of me and my family, and had been for a number of years. He done all he could toward settling that dispute between Packard and me. He finally settled it. That settlement was made along in August if I remember right, year before last, in August, 1927. That was made between the making of the \$10,000 payment which had been made in June, and the \$20,000 payment which was to become due in December, 1927. Packard and I were at Payson when Judge Shute arranged this settlement. Judge Shute was up there at the time. I was up there camped in a little clump of trees about five or six hundred yards from Packard. I recall Judge Shute coming up to see me and telling me he had arranged an adjustment of that controversy with Packard along certain lines if it was agreeable [328] to me, and I told Judge Shute to go right ahead. The arrangement reached was the one that has been testified to here this morning, by which Packard was to receive one-half of 70% of the \$200,000. He was to receive it in cash. That was

(Testimony of Wesley Goswick.)

65% instead of 70%. After deducting 70% from the \$200,000 Packard got half of what was left. The reason I give Judge Shute \$2,000 in December, 1927, was because he told me he would need some money before long. I was talking to him a while before that. I sent that money to him by check. I sent it to him from Mesa. I didn't enclose a letter with the check—just sent the check. [329]

Cross-examination by Mr. NEALON.

Yes, I say I gave these sums of money to Judge Shute. These sums were a gift. They were not a payment on an agreement. There was no agreement on the last deal at all. On the first option with the Dougherty people there was an agreement between me and Judge Shute that he should have 10% of each of these payments as they came in. There wasn't an agreement to that effect on the second one. I didn't promise to pay each of these payments of 10% of the amount I received as they came in. I gave him some money. I never paid him no 10% or nothing like that. I don't know whether the amount I paid him amounted to 10% of each payment as it came in. I never figured it up. The first payment that was made to him under that new contract by me and by Mr. Packard jointly was \$500. I don't remember whether the second payment was made by me and Mr. Packard jointly of \$1,000. I don't remember when I gave it to him. I did not keep track of it. I would not say whether it was at the time the \$10,000 payment was made in

(Testimony of Wesley Goswick.)

June of 1927 that I paid him \$1,000 [330] or further up or back. I don't remember. I don't know whether I gave him \$1,000 or more or less. I might have give him \$1,000 or more or less. I don't remember. I don't keep the checks. I would get a report at the bank at the end of the month and I would take the old checks and burn them up. I guess the next payment due on that contract was \$20,000. It was due on December 8, 1927. I paid him in the month of December \$2,000. I would not call it payment. I sent it to him. I sent him my check for \$2,000. When the next payment of \$80,000 or approximately that was made, Judge Shute was in Globe. I met him there and at that time I paid him approximately 10% of the amount paid. I give him \$8,000. There was some small payments provided in that contract of \$150 a month and some returns from royalties to be made into the bank. I didn't give any part of that to Judge Shute. There was not a verbal agreement between me and Judge Shute under which I was to pay him 10% of the moneys received from the sale of this property to Foster as they came in. I never stated heretofore that there was such a verbal agreement. Not of the last deal. The first deal there was. I never said no such thing. I never stated heretofore that I had made a verbal agreement to pay Judge Shute 10% of the payments under the Foster agreement as they came in. I am sure of it. I know Mr. McBride, the gentleman who is sitting there. I met him up the road one

(Testimony of Wesley Goswick.)

time. I guess it was in November of last year. I guess Mr. McBride was accompanied by Mr. Cline at that time.

Q. Now, at that time, didn't Mr. McBride ask you if there had been an agreement between you and Judge Shute and didn't you say that there had been a verbal agreement between you?

A. I said on the old deal—on the first deal there was.

Q. I am not asking about the first deal at all. I am asking about the second deal.

A. I never said it. [331]

Q. Didn't you say that you had paid him in pursuance to that agreement 10% of the money as it came in? A. Of the last deal?

Q. The last deal. Answer the question so the reporter can get it, please.

A. Well, ask me again what you said.

The REPORTER.—(Reading:) “Q. Didn't you say that you had paid him in pursuance to that agreement 10% of the money as it came in?”

A. That is, on the last deal?

Mr. NEALON.—Q. Yes, on the last deal.

A. No.

Q. You did not say that to him?

A. No, I told him on the old deal.

Q. I am talking about the—

A. Well, I am too. I said I did not tell him that on the last deal.

Q. Didn't you tell him that you and Mr. Packard

(Testimony of Wesley Goswick.)

had paid \$500.00 out of the first payment that was made upon that property by Foster?

A. On the first?

Q. No, on the contract with Foster—first payment on the contract with Foster.

A. No, I don't think I told him that.

Q. Well, you don't think so now. You know whether you did or not. A. No, sir.

Q. Will you say that you did not tell him that?

A. No, sir, I won't.

Q. Will you say that you did not tell him that there was a verbal agreement there made by you?

A. I never told him there was a verbal agreement on the last deal. I told him there was one on the first deal. [332]

I didn't tell him there was a verbal agreement on the last deal, the Foster deal. He might have got it that way, but I never told him that. I told him there was an agreement on the first deal—on the old deal. I didn't tell him that I had paid \$500 under that agreement to Judge Shute when the first payment was made. I don't remember about telling Mr. McBride on that same occasion that I had paid him \$1000 under that verbal agreement when the \$10,000 was paid. I don't remember whether I told Mr. McBride that or not. I don't remember whether I paid Judge Shute the \$1000. I don't think so. There was no verbal agreement.

Q. Now, didn't you tell Mr. McBride that you paid the \$2000.00 in December, 1927, as a payment

(Testimony of Wesley Goswick.)

of his 10% on the \$20,000.00 payment made in December, 1927?

A. I might have told him that I sent Judge Shute \$2000.00, yes.

Q. Didn't you tell him you made that payment under the verbal contract with Judge Shute?

A. On the last deal?

Q. For the payment under the Foster contract?

A. No.

Q. You did not? A. No.

Q. Please say it so that the reporter can get it.

A. No, I did not.

Q. You did not say it. All right. Didn't you say to him that you had paid Judge Shute, in June of 1928, \$8000.00 as a payment due him under the Foster contract when the \$80,000.00—approximately \$80,000.00 was paid to you, Mr. Goswick?

A. I told him that I gave Judge \$8,000.00, yes.

Q. Didn't you tell him that it was a payment under that contract? A. I don't think I did.

Q. Are you sure that you did not? [333]

A. No, I ain't sure.

Q. You are not sure that you did not tell him that it was paid under that contract? A. No.

Mr. MOORE.—Now, what contract are you talking about?

Mr. NEALON.—We are only talking about one contract and that is the last contract or the Foster contract. That is the only one under which \$80,000.00 has been paid. There can be no mistake about it.

(Testimony of Wesley Goswick.)

Mr. NEALON.—Q. Mr. Goswick, I will repeat the question. Didn't you tell Mr. McBride at that meeting in November that you had paid to Judge Shute \$2000.00?

The COURT.—He has answered all of that about the \$2000.00 and the \$1000.00. Now, come back to the \$8000.00 You have gotten to that point.

Q. Mr. Goswick, didn't you tell Mr. McBride at that meeting between you in November, that in June, 1928, you paid Judge Shute \$8000.00, under your verbal agreement with Judge Shute, when the \$80,000.00 was paid to you under the Foster contract.

A. I told him that I give Judge \$8000.00.

Q. Didn't you tell him that you paid it under the contract? A. No, I did not.

The COURT.—Now, that is enough along there. Go on to something else.

Mr. NEALON.—Q. Didn't you tell him, at that same time, that you recognized that you would owe him, when the final payment was made, 10% of the amount and that your word was as good as your bond and you would pay Judge Shute when the final payment was made on the property?

A. I don't remember anything about that at all. I don't remember whether he asked me that or not.

Q. Do you remember saying to him that your word was as good as your bond? A. No, I do not.

Q. You don't remember whether you said anything about that at all or not?

A. About what? [334]

(Testimony of Wesley Goswick.)

Q. About paying the \$8000.00 to Judge Shute under the verbal contract?

A. I remember telling him I give Judge \$8000.00 but I don't remember anything about the other.

Q. And then about the—

A. There were no contract.

Q. Then, the other payment that was to be made later, under the payment due December 8, 1928, that when that payment was made you intended to pay Judge Shute 10% of the amount?

A. I don't remember anything about that at all.

I do not remember saying to Mr. McBride that total sums making \$20,000 were to be paid under that verbal agreement with Judge Shute. I don't think I did. I have no recollection of it. I made the sale to Foster myself. In regard to this settlement with Packard, Judge Shute had said something about Jess Henderson claiming \$50,000 from the sale of the property but I don't remember what it was. I don't remember anything about that. Mr. Packard said it was due Jess Henderson. I don't remember whether Judge Shute told me that Packard said to him that he, Judge Shute, was entitled to \$20,000. I don't know whether those two items of \$20,000 and \$50,000 were deducted from the \$200,000.00 in order to make that settlement. Shute made the settlement with Packard himself. Yes, I think \$70,000 was deducted and the agreement was that the balance was to be divided between me and Packard. I don't remember whether Judge Shute told me that \$20,000 of that amount was the

(Testimony of Wesley Goswick.)

sum that Packard said was due him under that contract. I did make a settlement with Packard that he was to get \$65,000 out of the payments to be paid in on the Foster contract to the Old Dominion Bank. I guess that agreement is a part of the escrow. It ought to be. I guess Judge Shute worked that agreement out. That was given to Packard because that was just about what was coming to him according to the work he has [335] done. I figured that was coming to him because he helped me work a little up there and then he was in the family. If \$20,000 was deducted in the settlement with Packard and another \$50,000 I don't know nothing about it. Judge Shute made that contract, of course. He made it without any consultation with me. I told him to go ahead and see if he could settle it up. Most any way that he settled it was all right with me. Yes, he explained to me how he settled it. He showed me the papers and I signed them. He explained to me how those figures were arrived at. He said he would deduct so much and then I would give Packard half of the other. I don't remember whether he said that \$20,000 of that deduction was what Packard said was due him. He never told me that. Not that I remember at all. He didn't tell me about the deduction of \$50,000 because Jess Henderson claimed that amount was due him. He just told me that he could settle it on a certain way and deduct 35% out and Packard to get half of what was left. I don't know when I paid this money to Judge Shute,

(Testimony of Wesley Goswick.)

whether I paid it on the basis of that \$20,000 that was deducted. I give him some money. He can have all the money I have got any time he wants. As to expecting to pay him \$8000 more when the balance of the purchase money under the Foster contract is paid, I don't expect to pay him anything unless I want to. I did not say to Mr. McBride at that meeting, as each of these \$7500 payments would be made, under the extension of that last payment on the contract, that I would pay Judge Shute \$750 of it. I don't remember telling him any such thing at all. I won't say that I did not tell it to him. I don't remember. I have not paid him \$750 of the payments that have been made since then. I haven't paid him any money since then. As to expecting Judge Shute to repay me any of these sums of money I have testified to paying him, he will if he ever makes it, yes. I expect him to repay part of it if he wants to. When I testified a while ago that it was a gift I meant [336] he can give me some, can't he? He can give me some if he wants to. If he doesn't, why it is jake with me.

TESTIMONY OF LOUIS E. FOSTER, FOR
THE BANKRUPT.

(Being Called as a Witness for the Bankrupt.)

(Examination by Mr. MOORE.)

My name is Louis E. Foster. My home is in Silver City, New Mexico. I know Wesley Goswick, the man who has just testified. In the fall

(Testimony of Louis E. Foster.)

of 1926 I negotiated an option on a cinnabar property owned by him up in the Tonto Basin. I first knew Judge Shute when the papers were ready to sign. I think it was December 8, 1926. It was right there at the time we signed the papers. I conducted the negotiations for that contract entirely with Wesley [337] Goswick. Judge Shute's name was never mentioned during my negotiations for that contract. I never received any communication from Judge Shute by correspondence or otherwise nor from anybody on his behalf prior to December 8, 1928. The way the deal come up first, we were operating the Arizona Cinnabar Company property and I understood, through Mr. Baker of that company, that the liability of the Arizona Quicksilver Company not completing their contract and I made a trip up at that time to see Mr. Goswick and I told him if it ever became open I wanted to handle it and wished he would let me know at once, because we would like to get it and the only one that I have ever heard from was Henderson and Duncan at Globe but they had nothing to do with it, that is, merely told me that the thing was open was all. The deal was completed with Mr. Goswick direct.

Cross-examination by Mr. NEALON.

I know Jess Henderson. It was not through him that I learned first that the property was for sale again. It was what you might call common knowledge around there that they were not going ahead

(Testimony of Louis E. Foster.)

with it, and, in fact, before I left for home, I had been told by Mr. Baker and one or two others that they thought the thing was not going through and I left word with one or two of them to let me know and Mr. Goswick, of course, he is out there at the mine and it is very difficult to get any such communication through and I told one or two of them to notify me if it became open and then I would come on over. I had no communication with Jess Henderson about it except one telegram. Well, that was not from him direct. Mr. W. G. Duncan sent me a wire and said that Henderson had word that the property was open and that—I know nothing at all about any arrangement between Mr. Goswick and any other person in regard to sales or compensation for sales or [338] compensation for services. When this contract was drawn between Mr. Goswick and me, we had the original contract drawn by my New Mexico attorneys. This is my remembrance but I would not swear to it but I think those were mailed to Mr. Goswick. That is as I remember it, and later I saw him and we discussed a few points in the matter, that is, there was one or two little things in there that I wanted kept and he wanted out and the final papers—there was one or two little changes in them. There was very few. He did not make any definite statement to the effect that he would have to consult with his lawyer in regard to it. I assumed, though, of course, that naturally he would have some lawyer glance it over some time before he signed it. I

(Testimony of Louis E. Foster.)

could not say how [339] long he kept those papers before he and I executed them at the Old Dominion Bank. It was not but a very short time. It might be a week or so. Something like that. I don't recall definitely. I don't know whether Judge Shute had been employed by Mr. Goswick or not. Nor do I know of any services that he had rendered. That was nothing I had anything to do with. I came across Judge Shute somewhere and went up to the hotel when the papers were ready to sign. I don't just recall whether Judge Shute was there or not at the final consummation of the deal, as a representative of Mr. Goswick or advising him, and I will tell you why. At that time, we provided a number of contracts and, to tell you the truth, I couldn't tell you whether Judge Shute was there or not when the papers were actually signed. But he was there just practically the day that we signed them but whether he was present to see the signatures or not, I don't recall. He did not go over all of the papers in my presence. Mr. Goswick had the papers when I saw him.

TESTIMONY OF ALICE PARRY, FOR THE BANKRUPT.

(Being Called as a Witness for the Bankrupt.)

(Examination by Mr. MOORE.)

My name is Alice Parry. I live in Phoenix. I am bookkeeper and chief clerk in the organization of Armstrong, Lewis & Kramer, of which Judge Shute is a member. I have occupied that position

(Testimony of Alice Parry.)

about eight years, and, ever since Judge Shute has been a member of the firm. It is a part of my duty as bookkeeper and chief clerk to prepare the income tax returns for the members of the firm. I do that by first figuring up the distribution of the earnings of each individual member of the firm and, then, when I find one of the members at leisure and I have time, I ask them if they have any other income and, finding that they have or they have not, I go ahead making up the individual income tax returns, asking them at various times if they have had any contributions, [340] any taxes or anything else that is deductible. I generally figure depreciation myself. All I ask them for is their income and their taxes that they have paid out and their contributions and interest and the various other items that are taken into consideration, and, then, when I have all of that data assembled, which sometimes I get from them and sometimes I get from their files, why, I figure—I take their income tax return and I figure that out. First, I figure it up as if all of the income was theirs and then I divide it equally between the husband and the wife, to see which way they will have to pay the least amount, and the way that is least, why, then, I put on the return and then I hand it in to them and ask them to sign it and give me their check and I mail it out for them. I haven't known it if any member of the firm has made a practice of checking over those returns after I have prepared them. They always sign it as I hand it to them.

Q. Referring to the return that you made for Judge Shute specifically, do you recall making a

(Testimony of Alice Parry.)

deduction on account of depreciation of the house at Globe?

A. I am sure that I did. I haven't the return before me but I imagine I made the return and deducted the 3% for depreciation, because that is the fixed amount.

Mr. MOORE.—Q. Mrs. Parry, I refer you to copy of Judge Shute's income tax for the year 1927, which is attached as an exhibit to Judge Shute's testimony given before the referee on June 15. Will you examine that and see if you can find a deduction for—I don't know where such appear on those things—the Noble note?

A. Yes, it is on the return of Judge Shute charged to bad debts. On the return of Judge Shute, charged to bad debts, Joseph Noble, \$1200.00.

Mr. MOORE.—Q. Now, Mrs. Parry, state whether or not Judge Shute directed you as to whether that should be charged off on his return or Mrs. Shute's return? [341]

A. Well, he didn't tell me to take it off of either.

Q. And did you take it off of the one that you thought would save the most taxes?

A. I did. I juggled the figures around until I found out which one would be the—would fix it so that there would be the less taxes.

Q. You followed that practice as to all members of the firm in making a joint return for husband and wife. A. I did.

Cross-examination by Mr. NEALON.

I got the information as to the income from the Globe property that I listed in the taxes for 1927

(Testimony of Alice Parry.)

direct from Judge Shute. I don't know whether I asked Judge Shute for that or whether some time when I saw him I said, "Judge Shute, how much rent do you get for the Globe house," and he probably told me. I would get it direct in that way. I have no other means of obtaining it. I had no other means of obtaining the amount of the taxes he paid on that property other than to obtain it from him or from the files. I mean from his personal files. They would just show the tax receipts, I imagine. I think I got it from him, though. The tax receipts might be filed away. I don't remember whether or not they were delinquent that year. I got the information on which I deducted from Judge Shute's personal account—personal return for 1927—the amount of the Joseph E. Noble note and interest, from Judge Shute. I did not have the note before me when I prepared that return. I did not have the record of the payment to the bank by means of check or otherwise on that. I took that item just as given me by Judge Shute. I did not know when I prepared that return that the Joseph E. Noble note had not been paid prior to December 31, 1927. I based the preparation of that return on the information given me by Judge Shute. I am familiar with the method of making these returns. I have been [342] making them up for 10 or 12 years. In regard to the item on the return of 1927 where there is reported an item "Wesley Goswick, commission on sale, \$1000," when I was getting this information from Judge Shute of the various sources of his income, he probably told me Wesley Goswick gave him \$1000. I probably put

(Testimony of Alice Parry.)

“commission on sale” on there myself because I did not know what else to put on. I have not an independent recollection of it at this time. Whatever information I did have I obtained from Judge Shute. I didn’t know anything other than Judge Shute told me about the Wesley Goswick transaction. I don’t know how I arrived at the conclusion that a commission on sale was the proper way to explain that return. I think I went to Judge Shute and asked him—“Now,” I said, “here is the amount that Armstrong, Lewis & Kramer paid you. Did you get any other money,” and, whatever is listed there, he told me, and Wesley Goswick \$1,000.00. Well, I did not ask him any further. He said Wesley Goswick paid him \$1,000.00 and, then, when I came to make up that statement, I suppose I thought, “Now, what was that for? I ought to explain that,” and I knew that Wesley Goswick some time had sold his mine but I really didn’t know that he paid Judge Shute that for commission. I have put that in there of my own volition. Why, I don’t know. Because I thought there was an explanation necessary. The reason I didn’t ask Judge Shute for that explanation, sometimes the men in our office are awfully hard to get at. They are busy, and, when I have a few minutes time, why, they are busy. When they have a few minutes time, why, I don’t think of these questions or I am so busy I have no time to ask them. When I make up these returns, as a rule, they are in conference or they are in court and a lot of this I have fixed up and I think, “Well, if there is any corrections, they will be caught and come back to me,” but, as a rule,

(Testimony of Alice Parry.)

these income tax returns lay on their desk until the 15th of March and I have to go in and say, "Judge Shute, will you please [343] sign your income tax return," and he will say, "Mrs. Parry, where is it," and I will say, "I put it on your desk," and so we hunt around and find it and he signs it and gives me a check and I send it off. My practice is when I have completed the preparation of the return to place it on Judge Shute's desk for examination by him. I don't know of my own knowledge whether he has examined that return or not prior to the time that he signs the oath to it. He may have read every item of the return. If there is not an item of \$2000 on the return he did not tell me that he had received \$2000 from Wesley Goswick on the 31st of December, 1927, or about that time. I did not know that Judge Shute had received \$2000 from Wesley Goswick at that time. I obtained the amount of the deduction on the tax return of \$529.00 paid for interest from Judge Shute. I don't know what that interest was paid on. I don't know whether that interest was paid on the mortgage on the Globe home place or not. I don't know because the income tax return does not require that that be itemized, and so I did not know what it was for. I asked him the amount of interest he had paid out during 1927, and he told me the whole amount. When I asked him for that information, I imagine he went over his check books for in the course of a few days he had it on my desk. I don't know whether it was a memorandum in writing or whether he just came by my desk and said, "Mrs. Parry, I paid out so much." This income tax re-

(Testimony of Alice Parry.)

turn was made up by me either in February or March, 1928. I simply did the clerical work in making up that return. I did not supply anything in the way of information other than that I figured the amount of the income tax of Judge Shute from the law firm of Armstrong, Lewis & Kramer for that year. So far as every other figure in that return is concerned, the information came from Judge Shute either directly or indirectly. I mean by indirectly I got it from his files or anyone that I knew was going around and I said, "Well, did you do this?" I did not [344] get any indirect information in regard to the time of the payment of the Noble note. I knew that he had paid it. I don't know when, but some time before I made up that income tax I knew he had paid the note. I suppose it was during 1927. The information was not given me by Judge Shute that the note was paid on February 27, 1928. I knew when I made up this income tax return that he had paid the Noble note and I wanted—he had a large income last year and I wanted to take all of the deductions that I could. I did not know when he had paid the Noble note, but I knew that there had been a lot of conversation around the office and we had been trying to get hold of Joe Noble to pay that note and I knew that Judge Shute finally had to go down to the bank and pay it himself. I don't know when I got this information that he had paid that note, but I know when I made up this income tax I was trying to find out all of the things that I could deduct on that return. Referring to the income tax return both of Judge Shute and Mrs. Shute for the year 1926—the duplicate of

(Testimony of Alice Parry.)

the returns—that is my handwriting. I supplied the information in regard to the return of a \$2500 income from J. W. Bandauer from Judge Shute. I got the information in regard to the income of \$400 reported in this 1926 income tax as amount received from the dwelling-house at Globe under the heading of “Rents and Royalties,” from Judge Shute, and I got the information as to the taxes paid of \$152.60 the same way. Referring to the 1925 income tax return. In that year there was no return made up for Mrs. Shute. I got the information that there had been \$564.00 collected from the dwelling-house at Globe from Judge Shute.

Redirect Examination by Mr. MOORE.

I don't know whether the Noble note was paid from Judge Shute's bank account or Mrs. Shute's savings account. In placing the \$1000 received from Goswick under the head of “Commission from Sales” in 1927 income tax, I thought that form would [345] best fit the situation.

TESTIMONY OF ARTHUR T. LA PRADE,
FOR THE BANKRUPT.

(Being Called as a Witness for the Bankrupt.)

(Examination by Mr. MOORE.)

My name is Arthur T. La Prade. I am a practicing attorney in Phoenix.

Q. Mr. La Prade, this is an application by Judge Shute for discharge in bankruptcy. One of the grounds of opposition to discharge is that he withheld the sum of \$250.00 which he deposited with you during the month of December, 1927, for the pur-

(Testimony of Arthur T. La Prade.)

pose of investment, and which, subsequent to the adjudication in bankruptcy, was returned to said bankrupt by said Arthur La Prade. Will you kindly explain that situation—that transaction that arose, briefly?

A. Well, it came up something like this. There was a man by the name of G. W. Cornelius, who at one time was principal of the Flagstaff Normal School and principal of the High school and City [346] Schools in Winslow. He was there when I was in college and, during my vacations, I became acquainted with him and he was quite a respected citizen in town and now a man about forty-two years of age or forty-three. Now, the last ten years he has been in California. Some time in the spring of 1927, he came through Winslow and told me that he had been working as a geologist and locator of oil wells, working for different oil companies. I told him that I was interested and I would like some time to become interested with him in some of his propositions. In the fall of 1927, he came down to Phoenix. At that time, he told me that he had purchased 2400 acres, I believe, of land in Texas; that he had paid something like \$24,000.00 for it; that he had about \$25,000.00 worth of oil drilling equipment on the tracks at Marfa, Texas; that he had run out of money and needed \$10,000.00 to sink the well with. He and I talked about it quite a while and I suggested to him that I would raise the money for him by going out and getting a lot of my friends just to gamble with him and take a flyer for \$250.00 apiece and we would raise \$10,000.00, which would sink the well on his ground and with his equipment.

(Testimony of Arthur T. La Prade.)

I thoroughly believe that and I took him around and introduced him to Judge Shute and recommended him and also to Mr. Moore and Judge Struckmeyer and George Mickle and George Peter and, oh, any number of my friends around here, until I pledged about \$7500.00. Some of the money was turned over to Cornelius direct and some of it was paid to me and by me turned over to Cornelius. It turned out, briefly, that Cornelius did not own the land, had not bought the land and did not have the oil-well rig equipment. I spent some \$300.00 of my own money to send an investigator to Texas and found out that none of the representations that he had made were true and that he was an eighteen karat crook. I felt that I had been the unknown cause of my friends losing their money and that I had taken a man around to him that was not going to give them a run for their money and if he had drilled a dry hole, they would not [347] have had a kick coming, but he was crooking me and then from the beginning and they asked me what progress was being made and so I told them frankly what I had found out. "I don't feel right about it and I will reimburse every one of you men out of my own pocket," I said, so I went to the Valley Bank and borrowed the money and returned \$250.00 to Judge Shute, \$500.00 to Mr. Moore, \$500.00 to George Mickle, \$250.00 to McIntyre and, I don't know, quite a lot of them.

Cross-examination by Mr. NEALON.

I handled this matter as trustee—ran the account as trustee. I was going to be the sort of inter-

(Testimony of Arthur T. La Prade.)

mediary. I did not intend to turn over the \$10,000.00 to him but to advance it to him as he went along. He was to drill the ground—the well on his ground. He had 2400 acres, was the date. We checkerboarded it and took a 160 here and there. He did not have the leases when he was talking to me. He later secured them quite a while after the transaction. I had an assignment when he did not have them and, when I started getting after them, he later made some sort of arrangement with somebody where the abstract of record shows that he did get an assignment but he owed nothing when he was talking to me. He was to drill his well on his own ground and he would own the well, but he was to give us a forty acre offset, so we were to have—I guess it was a thousand acres that we were to have on this 2400 acre plat. We were to own it as tenants in common. And, in that way, I was to hold the title of the ground as trustee. Of course, I told the fellows—I says that I am going to advance the money to him from time to time as he needs it. I held the money in a trust account. I deposited it “Arthur T. La Prade, Trustee.” The last of that money was paid out by me before Christmas 1927. I did not collect the full amount of \$10,000.00. [348] I had pledged \$7500.00. I paid out to him \$2,000.00, I think, and he collected either \$500.00 or \$750.00 and I retained a thousand that I did not pay to him. I don’t remember when I exhausted the balance that was in the trustee account. When I thought that he had defrauded all of us I just went and drew on that thousand dollars that was left there and paid that out to four different members

(Testimony of Arthur T. La Prade.)

of them and then, some time after that, when it was convenient for me, I borrowed the money at the bank—I went to the bank and borrowed the money to pay the rest of them. I don't know whether Judge Shute was one of those four. I saw in the Record Reporter the fact that Judge Shute had gone into bankruptcy and it sort of shocked me to know that he was down in straits financially and I thought, "Well, if I am going to contribute to these fellows, now would be a good time to do it," and I just decided I would give him a contribution of \$250.00 to help him out. I don't know whether he was the first one that I gave a check to. That is, that thought went through my mind, I remember. I don't know if there was some balance in that trust account at the time that I gave Judge Shute that check. I would have to have my check book on which I withdrew that money. I don't know whether there was a balance in that trust account on April 17 of last year, the date of Judge Shute's petition in bankruptcy. I don't know whether Judge Shute had any interest in that account or not. I may have paid his money directly over to Mr. Cornelius. You see, I paid Mr. Cornelius \$500.00 one time, a thousand dollars another and, I think, \$500.00 another time. That was for the whole bunch—for all that had subscribed. I paid the funds out as I collected it. I don't know whether I paid his money over or whether I turned his particular money over to Mr. Cornelius. I don't know that.

TESTIMONY OF JOSEPH E. NOBLE, FOR
THE BANKRUPT.

(Witness for the Bankrupt.) [349]

(Examination by Mr. MOORE.)

My name is Joseph E. Noble. I have lived in Maricopa County about forty years. I have known Judge and Mrs. Shute since 1901. I have been closely associated in a friendly and social way during that time. I recall going to Judge Shute in 1927 and asking for a loan of \$1200.00. When I asked him for it Walter or Judge Shute told me that he did not have it himself; that I would have to see Jessie. Jessie is his wife. And I was anxious to get the money and I asked Walter where she was; whether she was out at the house and he said he thought she was shopping in town and I might find her at Goldwaters, so I went up to Goldwaters and found her and took her into the rest-room there and told her the situation; that I would like to have some—this money and she said that she would let me have it. Judge Shute said something to me about Mrs. Shute having a savings account from which a loan might be made and also Mrs. Shute told me that she had it in a savings account and that they would have to get it from the savings, if they got it at all.

Q. State whether the arrangements were made at the bank for you to have that money on Judge Shute's endorsement, with Mrs. Shute's savings account as security? A. Yes, sir.

Mr. NEALON.—I object to that, if your Honor please. The note is in evidence—copy of the note.

(Testimony of Joseph E. Noble.)

There is no such condition attached to it. It is a plain note.

The COURT.—I have seen the note.

Mr. NEALON.—With the endorsement of Judge Shute and the record of the bank in evidence here as a part of this record and none of them show any security, other than that endorsement, and I don't think they can now testify contrary to the written instrument—the negotiable promissory note. [350]

The COURT.—This is not a suit on a note, though. This is meeting a specification in your objections, it seems to me, a question of concealment, false return, perjury. I overrule the objection.

A. Yes, we went to the bank—Oh, Mr. Washburn—I think he was assistant cashier—and Mr. Washburn suggested that I make a note direct to the bank and that he would, with Walter's endorsement, let me have the money, under the condition that they hold the savings account of Mrs. Shute as security collateral, so they could liquidate it or pay it off any time they wanted to out of the savings account.

Mr. MOORE.—Q. Did you ever pay that note, Mr. Noble?

A. I did not.

Q. Have you ever been able to pay it?

A. No, sir.

Q. What is your condition as to solvency?

A. I am insolvent. I haven't anything.

Q. Have you any prospect of ever being able to pay it?

A. Not unless I can strike, in my legal practice, something fortunate or lucky enough to do it.

(Testimony of Joseph E. Noble.)

Cross-examination by Mr. NEALON.

I would be glad to pay the note when I am able to. Mrs. Shute didn't sign, at the time that I obtained this money from the bank, any instrument in regard to the savings account. She was not there. Walter was not there either. I signed it at the time and I don't know when Walter endorsed it. I knew that that was the condition, though. I know that I signed it and he gave me the money right there but I don't remember whether Walter signed it then or later. I don't remember. He did not sign it before, I don't think. I don't remember whether Judge Shute was there when [351] I got the money or not but I know he and I went and talked to Washburn about it. And all there is to it is that I signed the note and got the money. That is now in evidence here and Judge Shute I assume would have to be a surety. He endorsed it. He was not a co-maker. On the 17th day of April, 1928, I recognized that I had an obligation to pay this note to Judge Shute. I recognized that from the time I made it. I have never denied that obligation.

TESTIMONY OF ORME LEWIS, FOR THE
BANKRUPT.

(Witness for the Bankrupt.)

(Examination by Mr. MOORE.)

I have represented Judge Shute throughout his bankruptcy proceedings up until a short time ago, when you became associated with me. I have attended all of the hearings before the referee in

(Testimony of Orme Lewis.)

which Judge Shute was examined, with the exception of the ones, I believe, when they had a very short hearing and Mr. Armstrong attended. I recall having furnished the trustee with Judge Shute's checks, bank statements, statement from the firm of Armstrong, Lewis & Kramer as to his earnings, etc. Prior to April—May 29, I furnished a statement prepared by Mrs. Parry of the firm dividend to Judge Shute during the time that he had been connected with the firm and all of the available bank statements that Judge Shute had in his possession, all of his personal checks that he had in his possession, the check stubs and I believe that was all. They did not start in until November 5, 1925, I believe, that is, the checks. The bank statements, I believe, covered almost the entire period. There were a few missing that were later obtained from the bank. You asked the question whether I furnished those to Mr. Nealon; I saw to it that he received them. I do not recall whether or not I handed them to him myself or whether they were [352] taken over from Armstrong, Lewis & Kramer's office to his office. I do know that they were in his possession. Later on, Armstrong, Lewis & Kramer, by Robert Armstrong, furnished the original checks of the firm that had been drawn in favor of Judge Shute during this period. I have attended the examination of Judge Shute at which various sources of income were inquired into and explained as far as Judge Shute was apparently able to. From the bank statements, cancelled

(Testimony of Orme Lewis.)

checks, statements furnished by Armstrong, Lewis & Kramer and Judge Shute's examination on the stand, I prepared a statement showing his receipts and disbursements during the period from January 1, 1923, to November 5, 1925, and from January 16, 1924, to April 17, 1928, together with disbursements and amounts deposited and withdrawn and sources of income, as far as possible. This is a copy prepared from those sources and from information obtained from the First National Bank, where Judge Shute transacted his banking business, and that information that I obtained from the First National Bank was also disclosed by Mr. Sylvan Ganz in the examination before the referee. He was examined on that subject.

Whereupon Bankrupt's Exhibit "A" was admitted in evidence, without objection, as follows:
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BANKRUPT'S EXHIBIT "A."

Bankrupt's Exhibit No. A. Admitted and filed Jan. 10, 1929. C. R. McFall, Clerk. By J. Lee Baker, Chief Deputy Clerk. Case No. B.-486—Phx. Geo. W. Shute.

RECEIPTS

and

DISBURSEMENTS

JANUARY 1, 1923, TO NOVEMBER 5, 1925.

Source of Information

RECEIPTS:

Exhibit "A" A. L. K. \$16,924.95

Exhibit "B"	Rent	300.00	
Exhibit "B"	Loans	350.00	
Exhibit "B"	Source Unavail- able	464.34	
			\$18,049.29
			\$18,049.29

DISBURSEMENTS:

No Records Available Annual
 Average for the 2 5/6
 years \$ 6,370.38
 [354]

NOVEMBER 5, 1925, TO APRIL 17, 1928.

RECEIPTS:

Exhibit "A"	A. L. K.	\$26,665.79	
	Wentworth (Hudson Car Dec. 1927)	995.00	
Exhibit "B"	C. C. Julian (Sept. 1926)	5,000.00	
Exhibit "B"	Wes. Goswick (Dec. 1927)	2,000.00	
Exhibit "B"	Rent	250.00	
Exhibit "B"	Loans	475.00	
Exhibit "B"	Source Unavail- able	2,407.50	
			\$37,793.29
			\$37,793.29

DISBURSEMENTS:

Exhibit "B" Personal		
Checks	\$25,887.87	
Cash to Mrs.		
Shute (9-26)	1,000.00	
Cash to J. B.		
Armer	600.00	
Exhibit "B" Cash to Eng-		
land (6-6-22)	1,534.10	
Exhibit "B" Cash to Loan		
payments ..	631.57	
Exhibit "B" Cash to J. M. S.		
Acc't	650.20	
	<hr/>	
	\$30,303.74	\$30,303.74
		<hr/>
		\$ 7,489.55
		<hr/>

Expenditures
 Unaccounted \$7,489.55

Exhibit "C" Cash Checks... 2,200.50

 Total Cash Ex-
 pended and
 not Accounted \$9,690.05
 Yearly Average \$1,938.01

EXHIBIT "A."
ACCOUNTING.

JANUARY 16, 1924—APRIL 17, 1928.

1924.	Bank Deposits.		ALK. Receipts	Deposits Unacc't'd.	Cash Retained.
1.	\$	Jan. 10.	\$ 60.	\$	\$ 60.
2.	Jan. 16. 290.		390.		100.
3.	Feb. 2. 375.	Feb. 1.	375.		
4.	4. 50.			50.	
5.	Mar. 8. 437.50	Mar. 7.	437.50		
6.	Apr. 3. 150.	Apr. 2.	250.		100.
7.	16. 275.	16.	375.		100.
8.	23. 250.	23.	250.		
9.	24. 300.			300.	
10.	May 12. 275.	May 10.	375.		100.
11.	21. 600.	21.	750.		150.
12.	June 18. 275.	June 17.	225.		50.
13.	20. 150.			150.	
14.	July 10. 225.	July 9.	225.		
15.	17. 50.			50.	
16.	24. 70.	24.	150.		80.
17.	Aug. 18. 50.	Aug. 9.	25.		25.
18.		15.	25.		25.
19.	18. 50.			50.	
20.	19. 475.	18.	475.		
21.	Sept. 17. 250.	Sept. 16.	300.		50.
22.		27.	50.		50.
23.	Oct. 3. 137.50	Oct. 3.	137.50		
24.	18. 50.			50.	

1924.	Bank Deposits.		ALK. Receipts	Deposits Unacc't'd.	Cash Retained.
25	Oct. 21.	300.	Oct. 21.	300.	
26.	Nov. 7.	200.	Nov. 5.	225.	25.
27.	10.	150.	10.	150.	
28.	13.	644.85		64.85	
29.	18.	50.		50.	
30	Dec. 8.	150.	Dec. 8.	150.	
31.	12.	137.50	12.	137.50	
32.	18.	50.		50.	
33.			23.	25.	25.
34.	24.	125.	23.	125.	
		5,962.35		5,987.50	814.85
					840.
1925.					
35.	Jan. 5.	202.45	Dec. 31.	352.45	150.
36.	10.	450.	Jan. 12.	450.	
37.	19.	41.99		41.99	
38.	Feb. 7.	300.	Feb. 2.	300.	
39.	11.	750.	11.	750.	
40	Mar. 5.	150.	Mar. 5.	300.	150.
41.	20.	225.	19.	225.	
42.	Apr. 16.	375.	Apr. 13.	375.	
43.	20.	225.	20.	225.	
44.	30.	450.	24.	450.	
45.	May 11.	270.	May 11.	270.	
46	26.	450.	25.	450.	
47.	June 30.	57.50	June		57.50
48.			June 17.	60.	60.
49.	July 1.	440.	30.	540.	100.
50.	14.	100.	July 13.	150.	50.
51.	31.	150.	30.	150.	

1924.	Bank Deposits.			ALK. Receipts	Deposits Unacc't'd.	Cash Retained.
52.	Aug. 12.	50.	Aug. 12.	50.		
53.	Sept. 5.	200.			200.	
54.	10.	250.	Sept. 10.	400.		150.
55.			Oct. 8.	75.		75.
56.	Oct. 8.	225.	8.	225.		
57.	27.	150.	27.	150.		
58.	Nov. 7.	375.	Nov. 7.	375.		
59.	Dec. 12.	450.	Dec. 12.	450.		
60.	28.	50.	28.	50.		
		6,386.94		6,822.45	299.49	735.
1926.						
61.	Jan. 2.	263.14	Dec. 31.	263.14		
62.	7.	175.			175.	
63.	9.	175.			175.	
64.	16.	180.	Jan. 16.	180.		
65.	22.	500.			500.	
66.	Feb. 6.	750.	Feb. 6.	750.		
67.	25.	225.	24.	225.		
68.	Mar. 9.	125.	Mar. 9.	225.		100.
69.	26.	900.	25.	900.		
70.	Apr. 23.	450.	Apr. 23.	450.		
71.	29.	200.	27.	300.		100.
72.	May 24.	150.	May 24.	300.		150.
73.	June 1.	200.	29.	300.		100.
74.	18.	450.	June 17.	450.		
75.	July 1.	50.	30.	50.		
76.	13.	325.	July 13.	325.		
77.	17.	45.			45.	
78.	Aug. 12.	45.			45.	
79.	17.	125.	Aug. 16.	225.		100.

1926.	Bank Deposits.		ALK. Receipts	Deposits Unacc't'd	Cash Retained
80.	Aug. 24.	50.	(Aug.)	50.	
81.	27.	200.	27.	300.	100.
82.	Sept. 11.	500.		500.	
83.	17.	3,400.		3,400.	
84.	21.	175.		675.	500.
85.	Oct. 13.	750.	Oct. 11.	750.	
86.	Nov. 15.	200.	Nov. 15.	300.	100.
87.	22.	300.	22.	300.	
88.	Dec. 14.	100.	Dec. 14.	225.	125.
89.	14.	62.50		62.50	
90.	21.	50.		50.	
91.	23.	375.	23.	375.	
92.	29.	100.		100.	
		11,595.64		7,868.14	5,102.50
					1,375.
1927.					
93.	Jan. 3.	122.45	31.	222.45	100.
94.	4.	725.	Jan. 3.	825.	100.
95.	21.	750.	21.	750.	
96.	Feb. 17.	250.	Feb. 16.	450.	200.
97.	23.	50.		50.	
98.	Mar. 8.	450.	Mar. 8.	450.	
99.	Apr. 5.	275.		275.	
100.	12.	475.	Apr. 11.	675.	200.
101.	27.	250.	27.	450.	200.
102.			June 6.	150.	150.
103.	June 6.	500.	6.	5,850.	5,350.
104.	7.	465.90			465.90
105.	11.	200.	9.	300.	100.
106.	24.	2,968.43			2,968.45
107.	July 11.	500.	July 6.	500.	

1927.	Bank Deposits.	(July)	ALK. Receipts	Deposits Unacct'd.	Cash Retained.
108	(July)	6.	375.		375.
109	21.	21.	375.		
110		21.	300.		300.
111	Aug. 22.			295.	
112	Sept. 2.			500.	
113	26.	Sept. 26.	500.		250.
114	Oct. 10.	Oct. 10.	250.		
115	28.	25.	250.		
116	Nov. 9.	Nov. 8.	375.		
117	17.	16.	400.		
118	26.	25.	825.		200.
119	Dec. 5.			200.	
120	19.	Dec. 19.	750.		500.
121	20.			50.	
122	23.			100.	
123	31.			1,900.	

	Bank Deposits.		ALK. Receipts	Deposits Unacc't'd.	Cash Retained.
1927.					
124		31.	118.33		118.33
125		31.	331.87		331.87
	13,801.78		15,472.65	6,804.33	8,475.20
1928.					
126 Jan.	17. 50.			50.	
127	26. 150.	Jan. 26.	300.		150.
128 Feb.	8. 100.			100.	
129	20. 550.	Feb. 16.	750.		200.
130	28. 100.			100.	
131 Mar.	15. 625.	Mar. 14.	625.		
132		Apr. 6.	50.		50.
133 Apr.	9. 200.			200.	
134	11. 250.	10.	575.		325.
135.		10.	150.		150.
	2,025.		2,450.	450.	875.

	Bank Deposits	ALK Receipts.	Unacc't'd Deposits.	Cash Retained.
1924	\$5,962.35	\$ 5,987.50	\$ 814.85	\$ 840.00
1925	6,386.94	6,822.45	299.49	735.00
1926	11,595.64	7,868.14	5,102.50	1,375.00
1927	13,801.88	15,472.65	6,804.33	8,475.20
1928	2,025	2,450.00	450.00	875.00
	<hr/>	<hr/>	<hr/>	<hr/>
	\$39,771.71	\$38,600.74	\$13,471.17	\$12,300.20
	Total Income		\$52,061.91	
	Annual		12,249.88	

EXHIBIT "B"

EXPLANATION SHEET.

1924.

- 4 Feb. 4. \$ 50. deposit unaccounted. Rent from Globe House.
- 9 Apr. 24. \$300. deposit unaccounted.
- 13 June 20. \$150. deposit unaccounted. Borrowed from F. N. B. A.
- 15 June 17. \$ 50. deposit unaccounted. Rent from Globe House.
- 19 July 18. \$ 50. deposit unaccounted. Rent from Globe House.
- 24 Oct. 18. \$ 50. deposit unaccounted. Rent from Globe House.
- 28 Nov. 13. \$ 64.85 deposit unaccounted.
- 29 Nov. 18. \$ 50. deposit unaccounted. Rent from Globe House.

32 Dec. 18. \$ 50 deposit unaccounted. Rent
from Globe House.

1925.

37 Jan. 19 \$ 41.99 deposit unaccounted.

47 June 30. \$ 57.50 deposit unaccounted.

53 Sept. 5 \$200. deposit unaccounted. Bor-
rowed from F. N. B. A.

[361]

(EXPLANATION SHEET.)

1926.

62 Jan. 7. \$175. deposit unaccounted.

63 Jan. 9. \$175. deposit unaccounted.

65 Jan. 22. \$500. deposit unaccounted.

77 July 17. \$ 45. deposit unaccounted.

78 Aug. 12. \$ 45. deposit unaccounted.

80 Aug. 24. \$ 50. deposit unaccounted. Rent
from Globe House.

82 Sept. 11. \$500. deposit unaccounted. Part
of \$5,000 received from C.
C. Julian. Of the balance,
\$1,000 was given to Judge
Shute's Mother in Cash.

83 Sept. 17. \$3,400 deposit unaccounted.

89 Dec. 14. \$ 62.50 deposit unaccounted.

90 Dec. 21. \$ 50. deposit unaccounted. Rent
from Globe House.

92 Dec. 29. \$100 deposit unaccounted.

1927.

97 Feb. 23. \$ 50. deposit unaccounted. Rent
from Globe House.

- 99 Apr. 5. \$275. deposit unaccounted. Borrowed from F. N. B. A.
- 103 June 6. \$5,350. cash retained.

These transactions arise out of the \$5,850.00 check. This check was used for the following purposes:

1. Deposit of June 6th	\$ 500.00
2. Payment of note	275.00
3. Payment of interest	3.79
4. Payment of note	100.00
5. Payment of interest	2.78
6. Purchase cashier's check No. 37948	2,000.00
7. Purchase cashier's check No. 37948	2,968.43
	<hr/>
Total	\$5,850.00
	<hr/>

[362]

The \$2,000.00 cashier's check was given to A. E. England by Judge Shute as payment on account and for a car. In return Judge Shute was given change in the form of a check in the amount of \$465.90 which is item 104 herein.

- 104 June 7. \$465.90 deposit unaccounted. Accounted for in item 103.
- 106 June 24. \$2,968.43 deposit unaccounted. Accounted for in item 10.
- 110 July 21. \$300.00 cash retained. \$100.00 deposited to J. M. S. savings. July 21, 1927.
- 111 Aug. 22. \$295.00 deposit unaccounted.

- 112 Sept. 2. \$500.00 deposit unaccounted.
 119 Dec. 5. \$200.00 deposit unaccounted.
 121 Dec. 20. \$50.00 deposit unaccounted. Rent
 on Globe House.
 122 Dec. 23. \$100.00 deposit unaccounted. Bor-
 rowed from Mrs. Shute's Savings
 acc't.
 123 Dec. 31. \$1,900 deposit unaccounted. Por-
 tion of \$2,000 received from Gos-
 wick.

- (These two checks were given
 124 Dec. 31. \$118.33 cash re- (to Mrs. Shute together with
 tained. (the balance of \$100 from item
 (#123 and Judge Shute's
 125 31. \$331.87 cash re- ("Yourselves" drawn Jan. 4,
 tained. (1928. The total am't consti-
 tutes Mrs. Shute's Jan. 4,
 (1928, Savings acc't deposit
 (of \$1,050.20.

1928.

- 126 Jan. 17. \$50.00 deposit unaccounted. Rent
 on Globe House.
 128 Feb. 8. \$100.00 deposit unaccounted. Bor-
 rowed from F. N. B. A.
 130 28. \$100.00 deposit unaccounted.
 133 Apr. 9. \$200.00 deposit unaccounted.

The above explanation shows the total amount of
 income for which no accounting can be made to be
 \$2,861.34. This same amount will be shown on the
 balance sheet as \$464.34 for the period of January

1, 1923, to November 5, 1925, and \$2,407.50 for the period November 5, 1925, to April 17, 1928.

Some of these amounts found in the year 1928, undoubtedly [363] arise out of the \$995.00 received by Judge Shute on account of the Wentworth car, as the money he received came in three cash payments aside from the original payment of \$400.00 in the form of a cashier's check which was turned directly over to A. E. England. However these amounts have not been taken into consideration in the balance sheet so it may be well believed that the \$995.00 is accounted for twice, i. e., once in its own name and under the head "Source Unavailable." This is probably true of other items where money was retained by Judge Shute for the purpose of a loan or something similar and later deposited without any way of accounting for its source.

On the sheet entitled "RECEIPTS & DISBURSEMENTS," under the heading disbursements, in the second part of the item entitled "Cash to Loan payments \$631.50," is made up of the following items which are payments made to the First National Bank of Arizona:

January 19, 1923	(Principal).....	\$150.00
June 6, 1927	(Principal).....	275.00
	(Interest).....	3.79
	(Principal).....	100.00
	(Interest).....	2.78
December 19, 1927	(Principal).....	100.00
<hr/>		
TOTAL.....		\$631.57

410 *Thomas W. Nealon and J. J. Mackay*

The item "Cash to J. M. S. account \$650.20" is made up of the following amounts deposited to Jessie M. Shute Savings Account:

July	21, 1927	\$100.00	
December	31, 1927	118.33	
				331.07
January	4, 1928	100.00	
				<hr/>
				\$650.20

[364]

EXHIBIT "C."

G. W. S. "CASH" CHECKS.

1925.	Drawn to.	Amount	
Nov. 7.	Cash	\$ 10.00	
14.	Cash	10.00	
	Cash	50.00	
20.	Cash	5.00	
24.	Cash	20.00	
		<hr/>	
		\$ 95.00	\$ 95.00
Dec. 15.	Nat'l Bank Ariz.	5.00	
12.	Cash	175.00	
	Cash	5.00	
26.	Cash	5.00	
29.	Bearer	2.00	
		<hr/>	
		\$192.00	\$192.00
			<hr/>
			\$287.00

TOTAL YEAR 1925.

1926.

Jan. 7.	Self	\$ 10.00	
11.	Bearer	1.00	
12.	Cash	2.50	
16.	Cash	10.00	
	Cash	5.00	
		<hr/>	
		\$ 28.50	\$ 28.50
Apr. 24.	Self	\$ 20.00	\$ 20.00
		<hr/>	<hr/>
		\$ 20.00	\$ 20.00

[365]

1926.	Drawn to.	Amount.	
May 5.	Cash	\$ 10.00	
8.	Cash	10.00	
11.	Cash	5.00	
15.	Cash	15.00	
24.	Cash	5.00	
		<hr/>	
		\$ 45.00	\$ 45.00
June 1.	Cash	\$ 5.00	
3.	Yourselves	2.50	
8.	Cash	5.00	
14.	Cash	1.00	
	Cash	1.15	
18.	Cash	150.00	
19.	Self	10.00	
24.	Self	5.00	
26.	Cash	10.00	
		<hr/>	
		\$189.65	\$189.65

412 *Thomas W. Nealon and J. J. Mackay*

July 3.	Self	\$ 5.00	
13.	Cash	50.00	
		<hr/>	
		\$ 55.00	\$ 55.00
Aug. 30.	Self	\$ 5.00	
		<hr/>	
		\$ 5.00	\$ 5.00
Sept. 20.	Cash	\$ 5.00	\$ 5.00
		<hr/>	
		\$ 5.00	
Oct. 22.	Cash	\$ 5.00	
		<hr/>	
		\$ 5.00	\$ 5.00
Nov. 16.	Self	\$ 5.00	
	Cash	5.00	
26.	Cash	5.00	
		<hr/>	
		\$ 15.00	\$ 15.00
[366]			
1926.	Drawn to.	Amount.	
Dec. 1.	F. N. B. A.	\$ 2.50	
23.	Cash	10.00	
27.	Self	10.00	
	Cash	15.00	
29.	Cash	10.00	
		<hr/>	
		\$ 47.50	\$ 47.50
			<hr/>
TOTAL YEAR 1926.			\$415.65

1927.

Jan. 13.	Bearer	\$ 4.00	
24.	Cash	10.00	
25.	Cash	20.00	
27.	Cash	10.00	
28.	Cash	50.00	
		<hr/>	
		\$ 94.00	
Feb. 1.	Cash	\$ 25.00	
5.	Cash	10.00	
12.	Self	25.00	
19.	Cash	10.00	
22.	Cash	10.00	
23.	Self	5.00	
26.	Cash	10.00	
	Yourselves	2.50	
		<hr/>	
		\$ 97.50	\$ 97.50
Mar. 12.	G. W. Shute	\$ 25.00	
31.	Cash	10.00	
		<hr/>	
		\$ 35.00	\$ 35.00
Apr. 5.	Cash	\$ 25.00	
18.	Cash	50.00	
30.	Cash	10.00	
		<hr/>	
		\$ 85.00	\$ 85.00

[367]

	1927.	Drawn to.	Amount.	
May	2.	Bearer	\$ 2.00	
	3.	Cash	10.00	
	13.	Cash	20.00	
	19.	Cash	10.00	
	28.	Cash	5.00	
			<hr/>	
			\$ 47.00	\$ 47.00
June	4.	Cash	\$100.00	
	16.	Cash	5.00	
	18.	Cash	10.00	
	23.	Cash	5.00	
	24.	Cash	5.00	
	25.	Cash	10.00	
	30.	Cash	5.00	
		Cash	50.00	
			<hr/>	
			\$ 90.00	\$ 90.00
July	2.	Cash	\$ 20.00	
	9.	Cash	5.00	
	13.	Cash	5.00	
	15.	Cash	20.00	
	23.	Cash	10.00	
	27.	Cash	10.00	
	29.	Cash	10.00	
			<hr/>	
			\$ 80.00	\$ 80.00
Aug.	1.	Cash	\$ 5.00	
	3.	Cash	5.00	
	4.	Cash	50.00	
		Cash	3.00	

1927.	Drawn to.	Amount.	
10.	Cash	3.00	
16.	Cash	5.00	
17.	Cash	10.00	
18.	Cash	2.30	
[368]			
1927.	Drawn to.	Amount.	
(Aug.)			
24.	Cash	\$5 .00	
	Cash	5.00	
	Cash	20.00	
25.	Cash	3.00	
26.	Cash	10.00	
29.	Cash	7.00	
30.	Cash	50.00	
		<hr/>	
		\$183.30	\$183.30
Sept. 23.	Cash	\$ 5.00	
30.	Self	25.00	
		<hr/>	
		\$ 30.00	\$ 30.00
Oct. 17.	Cash	\$ 1.25	
22.	Cash	10.00	
28.	Cash	100.00	
		<hr/>	
		\$111.25	\$111.25
Nov. 9.	Cash	25.00	
10.	Cash	10.00	
15.	Cash	10.00	
17.	Cash	150.00	
18.	Cash	1.30	

		Drawn to.	Amount.	
1927.				
	19.	Cash	25.00	
	29.	Cash	10.00	
		Cash	300.00	
			<hr/>	
			\$531.30	\$531.30
Dec.	5.	Cash	\$ 3.50	
			<hr/>	
			\$ 3.50	\$ 3.50
TOTAL YEAR 1927				\$1,387.85

[369]

		Drawn to.	Amount.	
1928.				
Jan.	3.	Cash	\$ 20.00	
	7.	Cash	10.00	
	18.	Cash	10.00	
	21.	Cash	10.00	
			<hr/>	
			\$ 50.00	\$ 50.00
Feb.	2.	Cash	\$ 10.00	
	4.	Cash	10.00	
	8.	Cash	5.00	
			<hr/>	
			\$25.00	\$ 25.00
Mar.	9.	Cash	5.00	
	17.	Cash	20.00	
	23.	Cash	5.00	
			<hr/>	
			\$ 30.00	\$ 30.00
Apr.	4.	Cash	5.00	
			<hr/>	
			\$5.00	\$ 5.00
			<hr/>	
				\$ 5.00
TOTAL				\$2,200.50

G. W. S. CASH CHECKS USED FOR PARTICULAR PURPOSES.

1925.		Drawn to.	Amount.	Purpose.
Nov.	17.	Yourselves	\$ 75.00	Rent.
Dec.	21.	Yourselves	75.00	Rent.
			<hr/>	
			\$ 150.00	\$ 150.00
[370]				
1926.		Drawn to.	Amount.	Purpose.
Jan.	18.	Yourselves	\$ 75.00	Rent.
Apr.	23.	Yourselves	75.00	Rent.
May	28.	Yourselves	75.00	Rent.
June	18.	Yourselves	75.00	Rent.
Aug.	27.	Yourselves	75.00	Rent.
Sept.	20.	Yourselves	75.00	Rent.
Oct.	20.	Yourselves	75.00	Rent.
Nov.	24.	Yourselves	75.00	Rent.
Dec.	20.	Yourselves	75.00	
			<hr/>	
			\$675.00	\$ 675.00
1927.				
Jan.	21.	Yourselves	75.00	Rent.
Feb.	18.	Yourselves	75.00	Rent.
Apr.	5.	Yourselves	75.00	Rent.
	18.	Yourselves	75.00	Rent.
June	10.	Yourselves	75.00	Rent.
	24.	Yourselves	500.00	Deposit J. M. S. Savings Acc't.
Aug.	22.	Yourselves	50.00	Deposit J. M. S. Savings Acc't.

1927.	Drawn to.	Amount.	Purpose.	
Sept. 2.	Yourselves	\$100.00	Deposit J. M. S. Savings Acc't.	
Nov. 17.	Yourselves	100.00	Deposit J. M. S. Savings Acc't.	
		<hr/>		
		\$1,125.00		\$1,125.00
1928.				
Jan. 4.	Yourselves	\$ 500.00	Deposit J. M. S. Savings Acc't.	
Apr. 10.	Yourselves	100.00	Payment Loan to F. N. B. A.	
		<hr/>		
		\$600.00		\$ 600.00

[371]

(Testimony of Orme Lewis.)

Bankrupt's Exhibit "A," which has just been admitted in evidence, is a copy of an exhibit that was introduced in evidence in a hearing before the referee in December. It was December 28. Mr. Nealon had the checks, bank statements and other statements in his possession varying lengths of time. To begin with, he had, as I stated before, May 29, the bank statements that were available, cancelled checks—personal checks of Judge Shute, statement of dividends from Armstrong, Lewis & Kramer and, then, later, he obtained from Robert Armstrong the Armstrong, Lewis & Kramer checks cancelled that were paid to Judge Shute, both for expenses and as dividends, and those checks were given to him, if I am not mistaken, along in the latter part of November. You see, the way the thing was handled, this information was all in Armstrong, Lewis & Kramer's office and there was an arrangement by which those books and records of Armstrong, Lewis & Kramer were available to the trustee.

Mr. MOORE.—Q. May 1, 1927, you volunteered to Mr. Nealon to furnish him all information available and to explain any item, as far as possible, and to get him in conference with Judge Shute to go over all of his records and that the books of Armstrong, Lewis & Kramer were open to his inspection?

A. That is true. You see, since Judge Shute had merely checks, statements and stubs, there were many things that he could explain that a person

(Testimony of Orme Lewis.)

reading them could not understand and, for that reason, there were three hearings in May. At those short May hearings, Judge Shute and I stated that we would be glad to furnish information as to any item as it came up, because—I think it was the examination of May 29—Mr. Nealon started to examine individual checks and we all realized it was going to be a pretty slow procedure that way and we just agreed that he could call up Judge Shute or call up myself and we would come over and explain to him just what a check was for whenever he asked or what an item [372] on the deposits—on the bank statements was for.

Q. Mr. Lewis, have you yourself and, to your knowledge, Judge Shute, at all times been ready and willing and have offered to co-operate with the trustee in working up a statement from the documents submitted? A. We have.

Q. Well, what response have you got from such overtures?

A. Well, while we did offer to help them—give them information, we were called on, if at all, very, very seldom for information on that subject but it was given at the times that it was called for. If I may go on a little bit further, this statement that was prepared was prepared due to the fact that we felt there should be some explanation and, as we had not been called on for it for quite a while, I then asked Mr. Nealon for this data that I had given him to be returned temporarily, so that I could make up a statement, so that some explanation

(Testimony of Orme Lewis.)

could be made. I could not even determine it without going over each check and deposit and all that. It brought to my mind things that I did not know about that Judge Shute did not recall until they were forced on his attention by some particular item standing out.

Q. Did you have any difficulty in getting those items from the hands of the trustee?

A. Well, it took most of the summer.

Cross-examination by Mr. NEALON.

Q. Mr. Lewis, the Armstrong, Lewis & Kramer checks were produced in court in response to an order requiring the firm and its representatives to produce those records in court, were they not?

A. No, Mr. Nealon. If you will read the testimony at that hearing, you will notice that Mr. Armstrong stated specifically that he was appearing there merely to give you the aid and that he [373] was not appearing in response to the order.

Q. But the order had been made and the referee had ruled that it was sufficient prior to that time, had he not?

A. He had ruled that it was sufficient but Mr. Armstrong still did not respond to the order.

Q. He appeared in court as the representative of Armstrong, Lewis & Kramer?

A. And made a statement when he—

Q. But he appeared in court, Mr. Lewis? Please answer the question. A. He did.

Q. And Mrs. Parry, who signed the checks as

(Testimony of Orme Lewis.)

cashier, also appeared in court in response to the order, did she not? A. That is right.

Q. And they had the checks with them in court at that time? A. They did.

Q. Up to that time, no checks of Armstrong, Lewis & Kramer had been delivered to the trustee?

A. No.

Q. And at that time there was considerable objection made by Mr. Robert Armstrong to a delivery of the checks and finally arranged that they should be delivered to me; is that not correct?

A. No, that is not correct.

Q. All right, state exactly what happened, then.

A. Mr. Armstrong did not wish to give the checks into the possession of the court, as they constituted the only record of Armstrong, Lewis & Kramer. He stated at that time that he would be very glad to leave them there for the purpose of copies being made or to turn them over to you to study individually, which he did.

Q. Then, Judge Shute made the suggestion, did he not, that the checks themselves be left in my possession? [374]

A. I don't recall whether Judge Shute made that statement but perhaps he did. It was something of that sort. They were left in your possession, I know.

Q. Now, I wish to refresh your memory, Mr. Lewis, in regard to the leaving of the check stubs with me. You will recall, do you not, that there were only two packages of check stubs left in the

(Testimony of Orme Lewis.)

first instance and that subsequently, on my calling either your attention to it or Judge Shute, the checks up to April 17 were produced and turned over to me?

A. I do not recall that definitely but I can see how it would have happened. The checks that were in his present check book that he was using at the time were not delivered. Perhaps that is true.

Mr. MOORE.—Q. You mean the stubs?

A. The stubs.

Mr. NEALON.—Q. Now, you say that it took practically all summer to get those checks from me?

A. Yes.

Q. Isn't it a fact that you and I and Miss Bird-sall each accommodated one another as far as possible in the examination of the checks?

A. That is possibly true but, at the same time, my statement still stands as I made it.

Q. Now, the statement was made to you, at the time that you first asked for the checks, that Miss Birdsall was having them listed?

A. That is correct.

Q. And that as soon as they were returned to me they would be turned over to you? A. Yes.

Q. I did turn them over to you and you had them in your possession for several weeks, did you not? [375] A. That is true.

I have stated that it took me eight or ten weeks to prepare the statement which has just been introduced after the checks were turned over to me, but there is an explanation for that. The explanation

(Testimony of Orme Lewis.)

would be that unfortunately and I don't know just why, but the bank statements were not delivered to me at the same time as the checks. I think that was occasioned by the fact that Miss Birdsall was out of town and I did not get those for quite a while, and I was not able to prepare it until [376] much later on account of that. It may be that you gave me every facility for examination of the checks and preparation of any statement that I wanted to make, but at the same time it was not very fast. I believe I have a record of the time those checks were turned over to me. I do not like to state just out of memory the exact date. At a later period I furnished the missing checks and bank statement. Judge Shute was cleaning his office and he found in a desk a few checks. I believe there were probably about forty checks and four or five bank statements—monthly bank statements—but, while the checks—I turned the checks and the bank statements over to you immediately but I found that in the meantime you had replaced these missing bank statements with the ones from the bank, so it was not necessary for me to use them. You had prepared a copy of the missing bank statements, but you did not have the checks, that is true. I could not state whether quite a number of the check stubs were missing too. I haven't made any statement at any time that these checks were turned over to you other than as I said in May. Obviously those could not have been turned over to you prior to May, 16th since Judge Shute was drawing checks there

(Testimony of Orme Lewis.)

as late as May 16th before any were given to you. I really don't recall whether as a matter of fact they were not turned over until after May 29th when you asked for them. In my examination of all of these check stubs, checks and bank account, I did not find an absolutely complete report of the receipts of Judge Shute, but it was quite complete. It was not absolutely complete, I will admit that. It is correct that this statement I have made up was introduced before the Referee on December 27, 1928. I will not say that up to that time most of the information contained therein had not been furnished either to the trustee or made available in the court examinations. Every bit of the information that appears there was obtained by me from materials furnished to you by me from the [377] First National Bank and from a few questions asked of Judge Shute. Referring to the receipt by Judge Shute of \$5,000—\$10,000, rather—from C. C. Julian, and the payment by him of \$5,000, I won't answer directly your question that that item had never been revealed to you as trustee by me, Judge Shute or anybody representing Judge Shute that I know of prior to that time. I have a story to tell around that question. I cannot answer it in that way. You are correct that Judge Shute testified at that hearing that that information had not been testified to before that time as to the Julian money. My story is this: When I went over this statement or, rather, when I went over the materials and tried to make up this statement, I went over

(Testimony of Orme Lewis.)

all of the deposits that showed on Judge Shute's account and saw one lump of \$3400.00, the largest deposit ever made by Judge Shute, and I could not think what it was for. I put it down as a source unaccounted and I had two or three other small items and I talked to Judge Shute and I said, "What could a \$3400.00 deposit on such and such a day and \$500.00 deposited to Mrs. Shute's savings account at approximately the same time mean? I don't see where you got it." And he said, "I know what that is and that is where the story came out. It took things like that—It took going into the record that way at private to remind a person of things. I don't recall that Miss Bird-sall made an exhaustive examination of Judge Shute in regard to that \$3400.00 item. I don't believe she did. I think she did make quite an examination about the \$3,000 paid to Mrs. Holmes at about that time. I don't recall how it was explained or that no revelation was made of the source from which this money was obtained. I know that at that time there wasn't any statement made of the Julian money.

Q. And didn't Judge Shute testify in those hearings that he had not received any large amount from any other source than the firm of Armstrong, Lewis & Kramer? [378]

A. Shall I retestify to all that is in the record? Do I have to?

Q. I am asking you a question, Mr. Lewis.

A. Well, you are covering everything that is

(Testimony of Orme Lewis.)

in the record all of the way through. Do I have to go on and answer these questions?

Q. You know whether he testified, in answer to that one question, or not, do you?

A. He certainly did.

Q. And he testified that he had not received any other large amounts, did he not?

A. Well, I don't remember the exact words of it.
[379]

Q. Now, Mr. Lewis, showing to you this statement, Bankrupt's Exhibit "A," will you show me on that statement where among the receipts is shown the sum of \$500 received from Wesley Goswick in June of 1927—a thousand—sum of \$1,000.00, instead of \$500.00, received from Wesley Goswick by Judge Shute in June of 1927?

A. At the time this statement was made up, there were certain items listed in here for which the source was unaccounted. Afterwards, it appears, on August 22 of 1927, Judge Shute deposited \$295.00. On September 2, he deposited \$500.00.

Q. I am asking you about where you show in that account. A. There is where it is shown.

Q. I call your attention to your recapitulation on page 1 of your receipts and ask you if it shows in there at all? A. Yes.

Q. Show it.

A. All right, sources unavailable \$2,407.50.

Q. That is receipts the source of which is unavailable?

A. In other words, I could not find out at the

(Testimony of Orme Lewis.)

time where it came from. Since that time, we have found out this \$295.00 deposited and this \$500.00 deposited and, in talking with Wesley Goswick and other people, we have found out where that money came from, so it shows in there.

Q. So you got your information of this from Wesley Goswick and other people outside; is that right?

A. That is right and, for that reason, it does not appear in there as the information from which—in which the source is mentioned. You will notice it is source unaccounted but it is sufficient to cover the amount that you are asking about.

Q. Now, let me ask you if, in the examination of the bankrupt, special attention was not called to this item of \$1,000.00 and his report thereof in the income tax return of 1927?

A. I don't remember. I remember talking about the income tax [380] return but I don't remember there was talk about the thousand dollars otherwise.

Q. But you remember seeing that item in the income tax return, did you not?

A. Yes, that is the first time it occurred to me.

Q. So you did have available that source of information at the time you made up this statement, Mr. Lewis, did you not?

A. Had available that source but I will be very frank and say that I omitted to use the income tax statement but I could have explained those amounts.

Q. There were two other \$500.00 items received from Mr. Goswick that are not explained in this

(Testimony of Orme Lewis.)

statement, are there not—received by Judge Shute, I mean? A. I don't know.

Q. You did not hear Judge Shute testify to that?

A. I don't recall. They testified—

Q. I mean at the referee's hearings.

A. Do you mean that Judge Shute testified that he got two other \$500.00 items aside from this thousand dollar item?

Q. Yes.

A. I don't remember it. It is probably there, if you say so, but I don't recall it myself.

Q. He never did testify that he had received this \$1,000.00 item, did he? A. Let me see—

Q. In any hearing.

A. No, in no hearing and never to me.

Q. But he did testify to \$500.00 being given to him as a gift by Mr. Goswick after he had been up there and rendered some service in getting the optionee off of the property under the first option that has been testified to here in the courtroom?

A. Yes, I think—I don't remember; there is so many \$500.00 [381] testified about in regard to these payments by—

Q. Now, let me ask you if he did not testify to another \$500.00 received from Wesley Goswick after the sale of timber and other materials on some claims up there?

A. I don't have the slightest recollection of that.

Q. So that, if that source of information is in this record, you did not consider it in making up the statement of receipts; is that right?

(Testimony of Orme Lewis.)

A. You will notice that there is certain information there that is put down as source unavailable. That is put down when the information around which—Strike that. That is put down—Although you might consider something a source, still it would be unwise to consider it a source, because it might be a mistake, so that is put down as source unavailable. Now, you can tie those things up. I may not tie a lot of them very beautifully for you. You can hand me the paper and I can tie them all all of the way through so there won't be any source unavailable but I don't think it will be fair to do it.

Q. Wouldn't you consider the testimony of your own client a proper thing to consider in making up a financial statement for him?

A. You see, where you find a deposit in the bank of, say \$500.00, on a certain date and say Judge Shute has testified that he received \$500.00 from someone, the date is not exact. Nobody seems to know whether it was before or after that deposit. It is best to leave it source unavailable, and, then, if you want to, you can accumulate these sums that have been received and check them against these deposits and you will find you will come out approximately.

Q. How much aid is a statement of that kind to trustee in collecting in the assets of the estate?

Mr. MOORE.—It seems to me we are getting pretty far afield [382] asking Mr.—

(Testimony of Orme Lewis.)

Mr. NEALON.—That is the object of a statement, as I understand it.

The COURT.—Doesn't the statement speak for itself, don't you think?

Mr. NEALON.—I don't think it does, if your Honor please.

The COURT.—You are asking him to express an opinion as to how far it would enable the trustee to proceed.

Mr. NEALON.—Well, I have my opinion of that.

A. Well, I would like to answer that question. For myself, I don't think that is useful at all in bringing money in to the trustee. Not at all but I think that is probably useful in satisfying the trustee about the whole account. In other words, Judge Shute kept no account. You asked no questions on some of those points. I thought, out of consideration for you and out of consideration for Judge Shute and everybody concerned, that it would be very handy for everyone if we had some sort of statement that we could refer to. Therefore, that was prepared.

Q. Now, Mr. Lewis, this is not prepared as a statement showing his receipts and disbursements but rather as a reconciliation of his bank account; isn't that true?

A. No, I won't say that is true, because there are items in there that don't even appear in his bank account.

Q. Well, where do they appear?

(Testimony of Orme Lewis.)

A. They may appear in his savings account or they may appear in his testimony.

Q. In the savings account of Mrs. Shute?

A. Yes. You will notice quite a list there on the first page.

Q. Now, did you intend that, when you referred to a number of checks having been deposited in her account of the earnings of Judge Shute while a member of the firm of Armstrong, Lewis & Kramer—that the mere deposit of those checks in her account [383] accounted satisfactorily for loss of assets or Judge Shute's inability to meet his financial obligations?

A. I intended that just as you say.

Q. Can you tell me how we could tell, from the bank-books and deposits, in connection with the testimony of Judge Shute at the various hearings before the referee, the source of the \$1900.00 deposit of December 31, 1927, is explanation showing that that was made up of many other amounts rather than the \$2,000.00 check of Wesley Goswick, which now appears to be—

A. Mr. Nealon, if you will recall, at the meeting of creditors on December 27, when that statement that you have, Exhibit "A," was introduced in evidence, I realized that there were certain items on there about which explanations had not been made and testimony was given at that hearing to explain those few items of which a satisfactory explanation had not been heretofore made and which information I felt that you should have for the purpose of understanding the statement.